

VOL 1 of 1

COURT OF CRIMINAL APPEALS NO.

CR-03-0633

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

CIRCUIT COURT NO. CC 2002-909.60

CIRCUIT JUDGE Hobbs

Type of Conviction / Order Appealed From: Rule 32

Sentence Imposed:

Defendant Indigent: ☒ YES ☐ NO

Kourtney Greenwood

NAME OF APPELLANT

Kourtney Greenwood AIS# 179810

(Appellant's Attorney) (Telephone No.)

W.E.D.C.F.

(Address)

Bessemer, AL 35023

(City) (State) (Zip Code)

V.

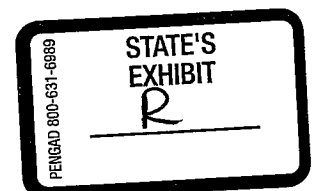
STATE OF ALABAMA

NAME OF APPELLEE

(State represented by Attorney General)

NOTE: If municipal appeal, indicate above, and enter name and address of municipal attorney below.

(For Court of Criminal Appeals Use Only)



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**CLERK'S RECORD**

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ACR0370

ALABAMA JUDICIAL INFORMATION SYSTEM

CASE: CC 2002 000909.60

OPER: TOR

CASE ACTION SUMMARY

RUN DATE: 09/29/2003

PAGE: 1

CIRCUIT CRIMINAL

IN THE CIRCUIT COURT OF MONTGOMERY

JUDGE: TMH

STATE OF ALABAMA

VS

GREENWOOD KOURTNEY SOVERN

W.E.D.C.F. #179810

100 WARRIOR LANE

BESSEMER, AL 35023 0000

CASE: CC 2002 000909.60

DOB: 12/11/1979

SEX: M RACE: B HT: 5 11 WT: 135 HR:

EYES:

SSN: 903070232

ALIAS NAMES: COURTNEY GREENWOOD

KOURTNEE GREENWOOD

CHARGE01: RULE 32-FELONY

CODE01: RULE LIT: RULE 32-FELONY TYP: F #: 001

OFFENSE DATE:

AGENCY/OFFICER: 0030100

DATE WAR/CAP ISS:

DATE ARRESTED: 07/24/2002

DATE INDICTED:

DATE FILED: 09/15/2003

DATE RELEASED:

DATE HEARING:

BOND AMOUNT: \$30,000.00

SURETIES:

DATE 1:

DESC:

TIME: 0000

DATE 2:

DESC:

TIME: 0000

TRACKING NOS: CC 2002 000909 00 /

DEF/ATY:

TYPE:

TYPE:

00000

00000

PROSECUTOR:

OTH CSE: CC200200090900 CHK/TICKET NO:

GRAND JURY:

COURT REPORTER:

SID NO:

001357047

OPER: TOR

STATUS: PRISON

DEMAND:

TRANS DATE ACTIONS, JUDGEMENTS, AND NOTES

OPE

09/29/2003 ASSIGNED TO: (TMH) TRUMAN M HOBBS (AR01) TOR

09/29/2003 FILED ON: 09/15/2003 (AR01) TOR

09/29/2003 BOND SET AT: \$30000.00 (AR01) TOR

09/29/2003 INITIAL STATUS SET TO: "P" - PRISON (AR01) TOR

09/29/2003 CHARGE 01: RULE 32-FELONY/#CNTS: 001 (AR01) TOR

09/29/2003 DEFENDANT ARRESTED ON: 07/24/2002 (AR01) TOR

09/29/2003 CASE ACTION SUMMARY PRINTED (AR08) TOR

09/29/2003 CAS ATTACHMENT PRINTED (AR08) TOR

09/29/2003 CASE ACTION SUMMARY PRINTED (AR08) TOR

09/29/2003 CAS ATTACHMENT PRINTED (AR08) TOR

9/29/03 Copy of Rule 32 to DA

9-30-03 Order Signed 9-29-03 giving State 30 days

to Respond

1-13-04 Order Denying Rule 32

11/17/04 Notice of Appeal w/ Forms

1-23-04 Certificate of Appeal to Crim Appeals AG +

Deft

ID YR NUMBER

(To be completed  
by Court Clerk)

2

## IN FORMA PAUPERIS DECLARATION

Circuit Court of Montgomery County Ala.  
[Insert appropriate court]KOURTNEE GREENWOOD

(Petitioner)

STATE OF ALABAMA

(Respondent(s))

DECLARATION IN SUPPORT OF REQUEST TO PROCEED  
IN FORMA PAUPERIS

I, Kourtnee Greenwood, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs, or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes \_\_\_\_\_ No X

a. If the answer is "yes", state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is "no", state the date of last employment and the amount of the salary and wages per month which you received.

April of 2002, \$5.50 an hour.

2. Have you received within the past twelve months any money from any of the following sources?

a. Business, profession, or other form of self-employment?

Yes \_\_\_\_\_ No X

b. Rent payments, interest, or dividends?

Yes \_\_\_\_\_ No X

c. Pensions, annuities, or life insurance payments?

Yes \_\_\_\_\_ No X

d. Gifts or inheritances?

Yes \_\_\_\_\_ No X

e. Any other sources?

Yes X No \_\_\_\_\_



From my Mother, Uncle & Friend, "I recieved one \$25 money order from my mom, I recieved \$25 here then \$30 again," two separate money orders from my Uncle, then one \$30 money order from my friend, \$1,10 Hundred & ten dollars in the last 12 months in all.

3. Do you own cash, or do you have money in a checking or savings account?

Yes \_\_\_\_\_

No ☒

(Include any funds in prison accounts.)

If the answer is "yes", state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

Yes \_\_\_\_\_

No ☒

If the answer is "yes", describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. 6 YRS

4 YRS Li KOURINEE GREENWOOD JR & KOURNECIA HOPKINS both my kids, I HAVE NOTHING RIGHT NOW, IF I COULD I WOULD.

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on 9/3/03 SEP 3, 2003  
(Date)

Kourtnee Greenwood  
Signature of Petitioner

### CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ 0.10 on account to his credit at the institution where he is confined. I further certify that petitioner likewise has the foregoing securities to his credit according to the records of said William E. Donaldson institution:

COURT COPY

9/4/03  
DATE

[Signature]  
AUTHORIZED OFFICER OF INSTITUTION

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY ALA

KOURTNEE GREENWOOD  
PETITIONER,  
VS.  
STATE OF ALABAMA  
RESPONDENT,

CASE NO# CC-2002-90

MOTION FOR APPOINTMENT OF COUNSEL.

COMES NOW THE PETITIONER KOURTNEE GREENWOOD, AND MOVES THIS HONORABLE

COURT PURSUANT TO THE 6<sup>th</sup> AMENDMENT OF THE UNITED STATES CONSTITUTION AND RULE 32.7 (c) OF THE ALABAMA RULES OF CRIMINAL PROCEDURE AND SHOWS UNTO THIS COURT THE FOLLOWING:

1. While INCARCERATED HERE AT DONALDSON CORR. FACILITY, PETITIONER IS SEEKING EDUCATION AND TRADE, AND CURRENTLY ATTEND LAW CLASSES THAT TAKE PLACE, PETITIONER IS UNLEARNED, UNTRAINED AND LACK THE ABILITY TO CONDUCT AN EVIDENTIARY HEARING.
2. PETITIONER, WAS AIDED WITH HELP IN PREPARING THIS RULE 32 PETITION,



AND IS IN NEED OF APPOINTMENT OF COUNSEL TO HELP PROTECT MY RIGHTS, AND REPRESENT ME, TO HELP ME SET OUT THE FACTS TO MY ISSUES INVOLVED, TO MEET THE BURDEN OF PROOF AS SET OUT IN RULE 32.3 OF THE ALABAMA RULES OF CRIMINAL PROCEDURE.

3. THE PETITIONER IS UNLEARNED IN THE AREA OF POST CONVICTION, AND IN MOST ALL AREAS OF CRIMINAL LAW, AND LACKS THE UNDERSTANDING OF THE AMERICAN JURISPRUDENCE SYSTEM.

4. THE APPOINTMENT OF COUNSEL WILL ALSO ASSURE THAT THE PETITIONER RECEIVE A FULL AND FAIR HEARING AS PROVIDED BY THE 6<sup>th</sup> AND 14<sup>th</sup> AMENDMENTS TO THE UNITED STATES CONSTITUTION.

5. THE APPOINTMENT OF COUNSEL WILL ALSO ASSURE THAT THE PETITIONER HEARING WILL NOT RESULT INTO A MISCARRIAGE OF JUSTICE.

WHEREFORE, THE PETITIONER PRAYS THAT THIS HONORABLE COURT WILL GRANT THIS MOTION FOR APPOINTMENT OF COUNSEL BASED ON THE

FACTS ABOVE.

Respectfully Submitted,

Kourtnee Greenwood

KOURTNEE GREENWOOD

AI5#179810 Dorm B-Bed-71

DONALDSON CORR, FACILITY

100 WARRIOR LANE

BESSEMER, AL 35023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THE FOREGOING ON THE DISTRICT ATTORNEY BY PLACING SAID IN THE UNITED STATES MAIL POSTAGE PREPAID AND PROPERLY ADDRESSED THIS 14<sup>TH</sup> DAY OF SEPTEMBER, 2003.

Kourtnee Greenwood

KOURTNEE GREENWOOD

CC: ELLEN BROOKS, DISTRICT ATTORNEY.



# PETITION FOR RELIEF FROM CONVICTION OR SENTENCE

(Pursuant to Rule 32,  
Alabama Rules of Criminal Procedure)

Case Number

11 02 909  
ID YR NUMBER

IN THE CIRCUIT COURT OF MONTGOMERY, ALABAMA

KOURTNEY GREENWOOD vs. STATE OF ALABAMA  
Petitioner (Full Name) Respondent

[Indicate either the "State" or,  
if filed in municipal court, the  
name of the "Municipality"]

Prison Number 179810 Place of Confinement W.E.D.C.F.

County of conviction MONTGOMERY

NOTICE: BEFORE COMPLETING THIS FORM, READ CAREFULLY  
THE ACCOMPANYING INSTRUCTIONS...

1. Name and location (city and county) of court which entered the judgment of conviction  
or sentence under attack MONTGOMERY COUNTY ALABAMA

2. Date of judgment of conviction DEC 30 2002

3. Length of sentence LIFE

4. Nature of offense involved (all counts) ROBBERY (1st) DEGREE

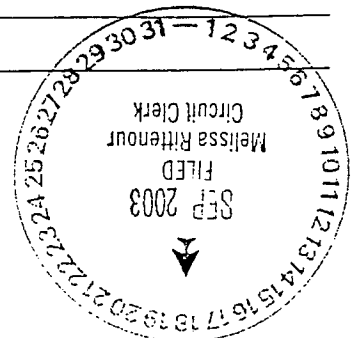
5. What was your plea? (Check one)

(a) Guilty \_\_\_\_\_

(b) Not guilty ☒

(c) Not guilty by reason of mental disease or defect \_\_\_\_\_

(d) Not guilty and not guilty by reason of mental disease or defect \_\_\_\_\_



6. Kind of trial: (Check one)

(a) Jury ☒

(b) Judge only ☐

7. Did you testify at the trial?

Yes ☒

No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

9. If you did appeal, answer the following:

(a) As to the state court to which you first appealed, give the following information:

(1) Name of court COURT OF CRIMINAL APPEALS

(2) Result DENIED

(3) Date of result NOT KNOWN

(b) If you appealed to any other court, then as to the second court to which you appealed, give the following information:

(1) Name of court COURT OF CRIMINAL APPEALS  
APPLICATION FOR REHEARING

(2) Result OVERRULING

(3) Date of result JUNE 13, 2003

(c) If you appealed to any other court, then as to the third court to which you appealed, give the following information:

(1) Name of court ALABAMA SUPREME COURT  
COURT OF CERTIORARI

(2) Result DENIED

(3) Date of result NOT KNOWN

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes \_\_\_\_\_

No ☒

11. If your answer to Question 10 was "yes", then give the following information in regard to the first such petition, application, or motion you filed:

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_

No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application, or motion, give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_

No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) As to any third petition, application, or motion, give the same information (attach additional sheets giving the same information for any subsequent petitions, applications, or motions):

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(attach additional sheets if necessary)

(4) Did you receive an evidentiary hearing on your petition, application, or motion?

Yes \_\_\_\_\_

No \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal to any appellate court the result of the action taken on any petition, application, or motion?

(1) First petition, etc.

Yes \_\_\_\_\_

No \_\_\_\_\_

(2) Second petition, etc.

Yes \_\_\_\_\_

No \_\_\_\_\_

(2) Third petition, etc.

Yes \_\_\_\_\_

No \_\_\_\_\_

**ATTACH ADDITIONAL SHEETS GIVING THE SAME INFORMATION  
FOR ANY SUBSEQUENT PETITIONS, APPLICATIONS, OR MOTIONS.**

(e) If you did not appeal when you lost on any petition, application, or motion, explain briefly why you did not:

12. Specify every ground on which you claim that you are being held unlawfully, by placing a check mark on the appropriate line(s) below and providing the required information. Include all facts. If necessary, you may attach pages stating additional grounds and the facts supporting them.

## GROUNDS OF PETITION

Listed below are the possible grounds for relief under Rule 32. Check the ground(s) that apply in your case, and follow the instruction under the ground(s):

\_\_\_\_\_ A. The Constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

For your information, the following is a list of the most frequently raised claims of constitutional violation:

- (1) Conviction obtained by plea of guilty which was unlawful, induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (2) Conviction obtained by use of coerced confession.
- (3) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (4) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (5) Conviction obtained by a violation of the privilege against self-incrimination.
- (6) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (7) Conviction obtained by a violation of the protection against double jeopardy.
- (8) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (9) Denial of effective assistance of counsel.

This list is not a complete listing of all possible constitutional violations.

If you checked this ground of relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each constitutional violation that you claim, whether or not it is one of the nine listed above, and include under it each and every fact you feel supports this claim. Be specific and give details.

☒ B. The court was without jurisdiction to render the judgment or to impose the sentence.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

☒ C. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

☐ D. Petitioner is being held in custody after his sentence has expired.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

☒ E. Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

The facts relied upon were not known by petitioner or petitioner's counsel at the time of trial or sentencing or in time to file a post-trial motion pursuant to rule 24, or in time to be included in any previous collateral proceeding, and could not have been discovered by any of those times through the exercise of reasonable diligence; and

The facts are not merely cumulative to other facts that were known; and

The facts do not merely amount to impeachment evidence; and

If the facts had been known at the time of trial or sentencing, the result would probably have been different; and

The facts establish that petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he did.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

\_\_\_\_\_ F. The petitioner failed to appeal within the prescribed time and that failure was without fault on petitioner's part.

If you checked this ground or relief, attach a separate sheet of paper with this ground listed at the top of the page. On this separate sheet of paper list each and every fact you feel supports this claim. Be specific and give details.

13. **IMPORTANT NOTICE REGARDING ADDITIONAL PETITIONS RULE 32.2(b) LIMITS YOU TO ONLY ONE PETITION IN MOST CIRCUMSTANCES. IT PROVIDES:**

**"Successive Petitions.** The court shall not grant relief on a second or successive petition on the same or similar grounds on behalf of the same petitioner. A second or successive petition on different grounds shall be denied unless the petitioner shows both that good cause exist why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and that failure to entertain the petition will result in a miscarriage of justice."

A. Other than an appeal to the Alabama Court of Criminal Appeals or the Alabama Supreme Court, have you filed in state court any petition attacking this conviction or sentence?

Yes \_\_\_\_\_

No \_\_\_\_\_

B. If you checked "Yes," give the following information as to earlier petition attacking this conviction or sentence:

(a) Name of court \_\_\_\_\_

(b) Result \_\_\_\_\_

(c) Date of result \_\_\_\_\_

(attach additional sheets if necessary)

C. If you checked the "Yes" line in 13A, above, and this petition contains a different ground or grounds of relief from an earlier petition or petitions you filed, attach a separate sheet or sheets labeled: "EXPLANATION FOR NEW GROUND(S) OF RELIEF."

On the separate sheet(s) explain why "good cause exists why the new ground or grounds were not known or could not have been ascertained through reasonable diligence when the first petition was heard, and [why the] failure to entertain [this] petition will result in a miscarriage of justice."

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes \_\_\_\_\_

No ☒

15. Give the name and address, if known, of each attorney who represented you at the following stages of the case that resulted in the judgment under attack:

- (a) At preliminary hearing JOHN WITLEV HARTLEY  
312 SCOTT STREET MONTGOMERY, ALA. 36102
- (b) At arraignment and plea 'Same'
- (c) At trial 'Same'
- (d) At sentencing 'Same'
- (e) On appeal MACEO KIRKLAND  
529 S. PERRY ST. MONTGOMERY ALA 36104
- (f) In any post-conviction proceeding N/A
- (g) On appeal from adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes \_\_\_\_\_ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes \_\_\_\_\_ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes \_\_\_\_\_ No ☒

18. What date is this petition being mailed?

9/14/03

Wherefore, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.



# PETITIONER'S VERIFICATION UNDER OATH

## SUBJECT TO PENALTY FOR PERJURY

14

I swear (or affirm) under penalty of perjury that the foregoing is true and correct.

Executed on SEP. 10<sup>th</sup>, 03  
(Date)

Kourtnee A. Greenwood  
Signature of Petitioner

SWORN TO AND SUBSCRIBED before me this the 10 day of SEPTEMBER, 2003.  
James C. Beachem  
Notary Public

MY COMMISSION EXPIRE  
SEPTEMBER 25, 2004

OR \*

### ATTORNEY'S VERIFICATION UNDER OATH

### SUBJECT TO PENALTY FOR PERJURY

I Swear (or affirm) under penalty of perjury that, upon information and belief, the foregoing is true and correct. Executed on \_\_\_\_\_  
(Date)

\_\_\_\_\_  
Signature of Petitioner's Attorney

SWORN TO AND SUBSCRIBED before me this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Name and address of attorney representing petitioner  
in this proceeding (if any)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* If petitioner is represented by counsel, Rule 32.6(a) permits either petitioner or counsel to verify the petition.

COURTNEY GREENWOOD  
PETITIONER

VS.

CASE NO: CC-D2-0909

STATE OF ALABAMA  
RESPONDENT.

PETITIONER GROUND OF PETITION

COMES NOW THE ABOVE STYLED PETITIONER, COURTNEY GREENWOOD, AND FILES THIS "PETITION FOR RELIEF FROM HIS ILLEGAL SENTENCE PURSUANT TO RULE 32, A.R.C.P., AND IN SUPPORT SHOWS THE FOLLOWING TO-WIT:

THE PETITIONER'S SENTENCE IS ILLEGAL DUE TO HIS INDICTMENT CHARGES ONLY (3<sup>RD</sup>) DEGREE ROBBERY. THEREFORE PETITIONER HAS BEEN CHARGED IN EXCESS OF THE MAXIMUM SENTENCE AUTHORIZED BY LAW.

THE PETITIONER WAS INDICTED FOR ROBBERY IN THE 1<sup>ST</sup> DEGREE AND WAS ENHANCED TO FIRST DEGREE BY SUBSECTION 13A-8-41(A)(1), WHICH STATES:

(1) IS ARMED WITH A DEADLY WEAPON OR DANGEROUS INSTRUMENT.

A PERSON COMMITS THE CRIME OF ROBBERY IN THE FIRST DEGREE IF HE VIOLATES SECTION 13A-8-43, CODE OF ALABAMA 1975, WHICH STATES AS FOLLOWS:

13A-8-43, ROBBERY IN THE THIRD DEGREE

(A) A PERSON COMMITS THE CRIME OF ROBBERY IN THE THIRD DEGREE IF IN THE COURSE OF COMMITTING A THEFT HE:

- (1) USES FORCE AGAINST THE PERSON OF THE OWNER OR ANY PERSON PRESENT WITH INTENT TO OVERCOME HIS PHYSICAL RESISTANCE OR,
- (2) THREATENS THE IMMEDIATE USE OF FORCE AGAINST THE PERSON OF OWNER OR ANY PERSON PRESENT WITH INTENT TO COMPEL OBEDIENCE TO THE TAKING OF OR ESCAPING WITH THE PROPERTY.

THE FACTS OF THIS CASE ARE, THE VICTIM ALLEGES THE PETITIONER WAS ARMED WITH A DEADLY WEAPON, TO WIT A GUN IS A DEADLY WEAPON AND AN ESSENTIAL ELEMENT OF THE STATUTE, 13A-8-41, FIRST DEGREE ROBBERY. HOWEVER IT ALSO HAS BEEN LEGALLY DETERMINED BY THE ALABAMA COURT OF CRIMINAL APPEALS IN THE DECISION OF DECK V. STATE, 677 S.D.2D.1267 (ALA. CR. APP. 1996)... THAT A GUN IS AN ELEMENT OF 13A-8-43, THIRD DEGREE ROBBERY. THE DECK COURT SET OUT THE PROPOSITION OF LAW AS FOLLOWS:

"AS A MATTER OF LAW, WIELDING A GUN CONSTITUTES BOTH USE OF FORCE AND THREAT OF FORCE REQUIRED FOR THIRD DEGREE ROBBERY."

THE POSSESSION OF A GUN DURING A ROBBERY IS AN ELEMENT OF BOTH (1<sup>ST</sup> AND 3<sup>RD</sup>) DEGREE ROBBERY. THIRD DEGREE ROBBERY IS ESSENTIAL ELEMENT WHICH MUST OCCUR BEFORE YOUR PETITIONER COULD BE CHARGED WITH (1<sup>ST</sup>) DEGREE ROBBERY. THEREFORE, IN ORDER TO CHARGE PETITIONER

Case 2:05-cr-00733-MPT-WC Document 34-5 Filed 11/15/2007 Page 19 of 44  
WITH (1<sup>ST</sup>) DEGREE ROBBERY THE REITERATION SUBSE-  
TION OF 13A-8-41, (A)(2) MUST HAVE OCCURRED AND ALLEGED  
IN THE INDICTMENT, WHICH STATES:

17

13A-8-41, (A)(2): CAUSES SERIOUS PHY-  
SICAL INJURY TO ANOTHER.

THE PETITIONER DID NOT CAUSES SERIOUS PHYSICAL  
INJURY TO ANOTHER, THEREFORE THE EVIDENCE OF A CRIME  
OF (1<sup>ST</sup>) DEGREE ROBBERY DID NOT OCCUR IN THIS CASE TO  
WARRANT A SENTENCE FOR (1<sup>ST</sup>) DEGREE ROBBERY, AS PETIT-  
IONER'S INDICTMENT CHARGES ONLY THE LESSER OR COMP-  
LETED CHARGE OF (3<sup>RD</sup>) DEGREE ROBBERY. SEE EXHIBIT A

PETITIONER SENTENCE IS THEREFORE IN EXCESS OF THAT  
AUTHORIZED BY LAW AS THE RANGE OF SENTENCE FOR (3<sup>RD</sup>) DE-  
GREE ROBBERY A CLASS (C) FELONY IS (1) YEAR (1) DAY TO (1)  
YEARS (13A-5-8), CODE OF ALABAMA 1975.

PETITIONER AVERS THAT HIS ILLEGAL SENTENCE CAN BE  
CHALLENGED AT ANYTIME. J.W.J. VS. STATE, 690 So.2D.519 (ALA  
CR. APP. 1996), AND MOORE VS. STATE, 733 So.2D.912 (1998). ALSO, IN  
THE CASE OF BARNES VS. STATE, 708 So.2D.217 (ALA. CR. APP. 1997)  
THE COURT OF CRIMINAL APPEALS HELD THAT AN APPELLANT  
WAS ENTITLED TO A HEARING ON A PETITION FOR POST CON-  
VICTION RELIEF WHERE HE ALLEGED THAT HE WAS SENTENCE  
TO A LIFE SENTENCE.

THE INDICTMENT IN THIS CASE ONLY CHARGES (3<sup>RD</sup>) DEGREE  
ROBBERY AS EXHIBIT (A) REFLECTS.

THEREFORE, HE ENTITLED TO AN EVIDENTIARY HEARING TO  
PRESENT ADDITIONAL EVIDENCE OR THIS COURT CAN DECIDE  
THE QUESTION OF LAW BASED UPON THE ATTACHED EXHIBIT AND  
APPLYING THE CONTROLLING DECISION OF DECK VS. STATE, SUPR

THAT ESTABLISHES THAT A GUN IS AN ELEMENT OF THE  
OFFENSE OF ROBBERY (3<sup>RD</sup>) DEGREE.

18

WHEREFORE, FOR THE ABOVE SAID REASONS PETITIONER PRAYS  
THAT THE REQUESTED RELIEF BE GRANTED.

Case 2:06-cv-00733-MHT-WC Document 34-15 Filed 11/16/2006 Page 20 of 141  
THE TRIAL COURT WAS UNLAWFUL IN REFUSING TO IMPOSE  
SENTENCE AND CONVICTION AS THE INDICTMENT IS VOID AS  
IT FAILS TO ALLEGE THE ESSENTIAL ELEMENTS OF (1<sup>ST</sup>) DEGREE  
ROBBERY "CAUSES SERIOUS PHYSICAL INJURY TO ANOTHER". 19

THE PETITIONER INCORPORATES ISSUE (I) INTO THIS SECOND CLAIM AND AVERS THE FOLLOWING, THAT HIS INDICTMENT EXHIBIT (A) ENCOMPASSES ONLY THE ELEMENTS REQUIRED TO CHARGE HIM (3<sup>RD</sup>) DEGREE ROBBERY, THE AVERMENT OF ARMED WITH A DEADLY WEAPON, OR DANGEROUS INSTRUMENT, IN THIS CASE A GUN, IS ALSO AN ELEMENT OF (3<sup>RD</sup>) DEGREE AS A MATTER OF LAW ESTABLISHED IN DICK VS. STATE, 677 So.2D, 1267 (ALA, 1<sup>ST</sup> D. APP. 1996) WHICH HELD:

"AS A MATTER OF LAW, WIELDING A GUN CONSTITUTES BOTH USE OF FORCE AND THREAT OF FORCE REQUIRED FOR THIRD DEGREE ROBBERY."

PETITIONER THEREFORE COULD ONLY BE CHARGED WITH (1<sup>ST</sup>) DEGREE ROBBERY IF IT WAS ENHANCED BY THE FACTS OF THIS CASE, THAT PETITIONER CAUSED THE VICTIM SERIOUS PHYSICAL INJURY TO ANOTHER AS REQUIRED BY SECTION 13A-8-11 (A) (2), OF THE CODE OF ALABAMA 1975.

THE PETITIONER INDICTMENT IS VOID OF THIS ESSENTIAL AND IS THEREFORE VOID AS IT FAILS TO CHARGE (1<sup>ST</sup>) DEGREE ROBBERY. SEE EXHIBIT A.

WHEREFORE, FOR THE ABOVE SAID REASONS PETITIONER PRAYS THAT HIS SENTENCE AND CONVICTIONS BE VACATED OR IN THE ALTERNATIVE THAT THIS MATTER BE SET FOR AN EVIDENTIARY HEARING.



WHETHER THE PETITIONER WAS ILLEGALLY ARRESTED;  
RENDERING THIS COURT OF PERSONAL JURISDICTION  
OVER THE PETITIONER? YES

THE PETITIONER KOURTNEY GREENWOOD, WAS ALLEGED TO  
HAVE COMMITTED THE CRIME OF ROBBERY (1<sup>ST</sup>) DEGREE BY  
MONTGOMERY POLICE DEPARTMENT. THEREAFTER, LARRY COLE  
ELAND JR. APPEARED BEFORE A MAGISTRATE JUDGE, \_\_\_\_\_  
\_\_\_\_\_ TO OBTAIN A WARRANT FOR PETITIONER ARREST  
EXHIBIT B.

THE WARRANT FOR ARREST OF PETITIONER WAS ISSUED  
WITHOUT ANY VALID PROBABLE CAUSE. THE WARRANT CLEARLY  
REFLECTS THAT IT IS LACKING THE STATUTORY LANGUAGE  
OF THE ALLEGED CHARGED OFFENSE 13A-8-41, OF THE CODE OF  
ALABAMA (1975) EXHIBIT B.

THE WARRANT FOR ARREST OF PETITIONER STATES CONCLU-  
SIONS AND IS INSUFFICIENT IN AND OF ITSELF, TO SUPPORT  
A FINDING OF PROBABLE CAUSE TO ARREST PETITIONER.

WHEN A COMPLAINT OR WHAT A WARRANT IS ISSUED DOES  
NOT SUPPORT A FINDING OF PROBABLE CAUSE THE PETITIONER  
ARREST VIOLATES HIS CONSTITUTIONAL RIGHTS UNDER THE  
FOURTH AND FOURTEENTH AMENDMENTS. SEE: WHITELY VS.  
WARDEN OF WYOMING PENITENTIARY, 401 U.S. 560, 28 L. ED. 2  
306, 111 S. CT. 1031,

JURISDICTION OF THE PERSON IS ESSENTIAL TO THE POWER  
OF A COURT TO DETERMINE A LEGAL CONTROVERSY. PERSONAL  
JURISDICTION REQUIRES A BASIS FOR JURISDICTION  
AUTHORIZED BY STATUTE AND CONSISTENT WITH DUE PRO-  
-CESS. SEE: RANKIN VS. HOWARD, C. A. ARIZ. 633 F.2D 844 CERT



THE ILLEGAL ARREST OF THE PETITIONER, AS ~~A WARRANT~~  
RENDERED THE TRIAL COURT OF ANY PERSONAL JURISDICTION  
OVER THE PETITIONER, AS A WARRANT BASED UPON PROBABLE  
CAUSE HAD TO BE ISSUED TO LEGALLY ARREST PETITIONER.

IN ORDER FOR THE TRIAL COURT TO OBTAIN PERSONAL JURISDICTION OF THE PETITIONER THERE FIRST HAD TO HAVE BEEN A LAWFUL ARREST; IN THIS CASE IT JUST DID NOT OCCUR. FOURTH AMEND. U.S.C.A.; TAYLOR VS. ALABAMA, 457 U.S. 681, 73 L. ED. 2D 314, 102 S. CT. 2664.

THEREFORE, THE JUDGMENT OF THE COURT IS VOID.

WHETHER THE TRIAL COURT IMPROPERLY SENTENCED PETITIONER TO LIFE IMPRISONMENT AS A HABITUAL OFFENDER WITH (2) PRIOR CONVICTIONS? YES

ARGUMENT

PETITIONER ARGUES THAT HE HAD (1) PRIOR CONVICTION FOR USE AT THE TIME HE WAS SENTENCED FOR ROBBERY (1<sup>st</sup>) DEGREE FOR CASE NO. CC-02-909. SEE EXHIBIT

PETITIONER ALSO ARGUES THAT ON CASE NO. CC-99-45 FOUR PETITIONER WERE NOT SENTENCE UNTIL 12-30-02 PETITIONER SHOW THIS COURT THAT THIS PRIOR CONVICTION WERE IMPROPER TO BE USED AS A COUNTABLE PRIOR. SEE EXHIBIT C.

PETITIONER ARGUES THAT HIS SENTENCE OF LIFE IMPRISONMENT EXCEEDS THE MAXIMUM SENTENCE AUTHORIZED BY LAW. PETITIONER ALSO ARGUES THAT THE PERMISSIBLE RANGE OF SENTENCE FOR ROBBERY (1<sup>st</sup>) DEGREE A CLASS A FELONY WITH ONE PRIOR FELONY (15) YEARS LIFE OR (99) YEARS THE RECORD REVEAL THAT THE COURT ABUSED ITS DISCRETION BY SENTENCING THE PETITIONER TO (LIFE) IMPRISONMENT. SEE EXHIBIT C.

PETITIONER ARGUES THAT HIS LIFE SENTENCE CONSTITUTE A VIOLATION OF PETITIONER'S EIGHTH AMENDMENT RIGHTS AND WHERE THE PUNISHMENT IMPOSED WERE NOT IN THE STATUTORY RANGE. REVIEWING COURT ONLY OVERTURN THE SENTENCING DECISION IF A CLEAR ABUSE OF DISCRETION BY THE TRIAL COURT.

PETITIONER ALLEGES THAT SEVERAL RULES DEFECTS  
ERRORS CAN BE RAISED AT ANY TIME. SEE T.O.T. VS. STATE  
196 So.2D 510 (ALA. CR. APP. 1996); AND MOORE VS. STATE 77E  
So.2D 912 (1998); ALSO, BARROWS VS. STATE, 708 So.2D 217 (ALA  
CR. APP. 1997). SEE EXHIBIT C.

ISSUE FIVE

PETITIONER'S NEWLY DISCOVERED EVIDENCE; IN SUP-  
PORT OF PETITION;

ARGUMENT

WHETHER THAT PETITIONER WAS DENIED HIS  
RIGHTS TO HAVE COMPULSORY PROCESS FOR OBTAINING  
WITNESSES IN HIS FAVOR VIOLATION PETITIONER 6<sup>TH</sup>  
AND 14<sup>TH</sup> AMENDMENTS OF THE UNITED STATES CONSTIT-  
UTION, AND VIOLATION PETITIONER RIGHTS OF DUE  
PROCESS.

PETITIONER AVER'S THAT IF THIS NEWLY DISCOVERED  
EVIDENCE HAD BEEN KNOWN AT TRIAL ABOUT JAMAR BROWN  
A KEY WITNESS WITHHELD INFORMATION OF MY INNOCENCE  
WHICH WITHHELD PETITIONER FROM RECEIVING A FULL AND  
FAIR TRIAL.

PETITIONER AVER'S THAT THE STATE OF ALABAMA DISTRICT  
ATTORNEY OFFICE KNEW OF THIS WITNESS AND OF INFORMATION  
HE WITHHELD CONCERNING THIS CRIMINAL MATTER, DEPRIVE  
YOUR PETITIONER OF A FAIR TRIAL AS REQUIRED BY THE  
6<sup>TH</sup> AND 14<sup>TH</sup> AMENDMENTS OF THE UNITED STATES CONSTITU-  
TION.

PETITIONER AVER'S THAT THE STATE NOR PETITIONER COULD  
MAKE THIS WITNESS TESTIFY. IF JAMAR BROWN WAS  
WILLING TO TESTIFY OR NOT HE AS A KEY WITNESS SHOULD  
HAVE STILL BEEN SUBPENAED TO COURT TO AVOID VIOLATION  
OF DUE PROCESS OF PETITIONER'S RIGHTS.

PETITIONER AVER'S THAT ANY AND ALL KEY WITNESSES SHOULD  
HAVE BEEN SUBPENAED TO TESTIFY TRUTHFULLY IN  
THIS CRIMINAL CASE IN THE PRESENCE OF THE JURORS AND

MATTER IF WITNESS TESTIFIED OR NOT HE SHOULD HAVE BEEN BROUGHT BEFORE THE JURORS PRESENCE!! FOR THE RECORD IN OPEN COURT.

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PETITIONER AVER'S THAT HIS CLAIM AS NEWLY DISCOVERED EVIDENCE IS A KEY WITNESS IS NOW WILLING TO TESTIFY TRUTHFULLY IN THIS CRIMINAL CASE. ALSO, THE WITNESS STATES IN SUPPORT AS NEW EVIDENCE, THAT THE REASON HE DID NOT TESTIFY AT AN EARLIER DATE WAS BECAUSE HE WAS PROMISED A SENTENCE OF (20) YEARS OR SERVE (3) OR PROBATION FOR HIS COOPERATION IN THIS CASE. SEE AFFIDAVIT FROM JAMAR BROWN, EXHIBIT D AND E.

PETITIONER AVER'S THAT THE STATE OF ALABAMA MONTGOMERY COUNTY DISTRICT ATTORNEY OFFICE HAVE DEPRIVED OUR PETITIONER HIS RIGHT TO DUE PROCESS AND EQUAL PROTECTIONS OF THE LAW BY WITHHELD INFORMATION OF A KEY WITNESS JAMAR BROWN, EXHIBIT D AFFIDAVIT

PETITIONER AVER'S THAT THE CONSTITUTIONAL GUARANTEES DUE PROCESS AND EQUAL PROTECTION BOTH CALL FOR PROSECUTION IN CRIMINAL TRIALS AND POST-CONVICTIONS WHICH ALLOW NO ENVIDIOUS DISCRIMINATIONS BETWEEN PEOPLE OF DIFFERENT GROUPS. ALL PEOPLE CHARGED WITH A CRIME MUST SO FAR AS THE LAW IS CONCERNED STAND ON AN EQUALITY BEFORE THE BAR OF JUSTICE IN EVERY AMERICAN COURT. SEE CONSTITUTIONAL LAW 500-831. SEE EXHIBIT D & E

PETITIONER AVER'S THAT HE RECENTLY RECEIVED THIS INFORMATION OF AFFIDANT FROM JAMAR BROWN AFTER DILIGENT SEARCH AND RESEARCH OF FACTS AND INFORMATION MADE ARE TO YOUR PETITIONER. ALABAMA RULES OF CRIMINAL PROCEDURE, RULE 32.1 AND 32.2 ET. SEQ.,

WITHIN (6) MONTH OF THE PETITIONER DISCOVERY OF THE NEW MATERIAL FACTS AS ALLEGED HEREIN ABOVE. THE FACTS RELATING TO THE AFFIDANT OF JAMAR BROWN WERE NOT KNOWN BY PETITIONER AT THE TIME OF TRIAL OR SENTENCING OR IN TIME TO FILE A POST MOTION PURSUANT TO RULE 24, A.F.R.P. OR IN TIME TO BE INCLUDED IN ANY PREVIOUS COLLATERAL PROCEEDING AND COULD NOT BEEN DISCOVERED BY ANY OF THOSE TIME THROUGH THE EXERCISE OF REASONABLE DILIGENCE; THE FACTS ARE NOT MERELY CUMULATIVE OF OTHER FACTS THAT WERE KNOWN; THE FACTS ALLEGED HEREIN ABOVE HAD BEEN KNOWN AT THE TIME OF THE PETITIONER TRIAL OR SENTENCING THE RESULT OF THE PROCEEDING WOULD HAVE BEEN VERY DIFFERENT, IN THAT THE JURY WOULD NOT HAVE FOUND PETITIONERS GUILTY; AND THE FACTS ALLEGED HEREIN ABOVE ESTABLISHES THE PETITIONER INNOCENCE OF THE CRIME CHARGED, SEE EXHIBIT D.E



WHEREFORE PREMISES SHOWN, YOUR PETITIONER  
HEREBY PRAYS FOR THE FOLLOWING:

(1)

YOUR PETITIONER HEREBY PRAYS THAT PURSUANT TO  
A. R. C. P. Rule 32, 7(A), THE RESPONDENTS BE ORDERED  
TO RESPOND TO THIS INSTANT RULE 32 PETITIONS WITHIN  
30) DAYS, AND;

(2)

THAT YOUR PETITIONER'S RULE 32 BE GRANTED AND FOR  
THIS HONORABLE COURT TO APPOINT PETITIONER'S COUNSEL  
TO REPRESENT PETITIONER IF THIS HONORABLE COURT  
GRANTED AN EVIDENTIARY HEARING, AND;

(3)

THAT YOUR PETITIONER'S CONVICTION AND SENTENCE  
BE IMMEDIATELY VACATED BY THIS HONORABLE COURT,  
WITH PREJUDICE!!!

(4)

THAT THIS COURT GRANT WHAT FURTHER RELIEF THAT  
THIS HONORABLE COURT DEEMS JUST, PROPER AND NECESSARY

EXECUTED THIS THE 14<sup>TH</sup> DAY OF SEPTEMBER 2003.

KOURTNEY GREENWOOD  
AZS#179810 Dorm B-71  
W.E.D.C.F.  
100 WARRIOR LANE  
BESSEMER, AL

35023

RESPECTFULLY SUBMITTED  
Kourtney Greenwood



THE STATE OF ALABAMA  
MONTGOMERY COUNTY

Circuit Court of Montgomery County, JULY Term, A.D. 2002

The Grand Jury of said County charge that, before the finding of this indictment,

KOURTNEY SOVERN GREENWOOD, alias  
KOURTNEE S. GREENWOOD, alias  
KOURTNEE SOVENS GREENWOOD, alias  
COURTNEY S. GREENWOOD, alias  
K.S. GREENWOOD, alias  
KOURTNEY S. GREENWOOD, alias  
KOURTNEE SOVERN GREENWOOD, alias  
KOURTNEE SOVENSKY GREENWOOD, alias  
COURTNEY SOVENSKY GREENWOOD, alias  
COURNEY GREENWOOD,

whose name is otherwise unknown to the Grand Jury, did, in the course of committing a theft of lawful currency and/or coinage of the United States of America, of some value, a better description of which is unknown to the Grand Jury, use force against the person of the owner or any person present, Larry Copeland, Jr., with intent to overcome his physical resistance or physical power of resistance, or threaten the imminent use of force against the person of the owner or any person present, Larry Copeland, Jr., with intent to compel acquiescence to the taking of or escaping with the property, while the said Kourtney Sovern Greenwood, alias was armed with a deadly weapon or dangerous instrument, a gun, a better description of which is unknown to the Grand Jury, in violation of Section 13A-8-41 of the Code of Alabama,

against the peace and dignity of the State of Alabama.

  
District Attorney, Fifteenth Judicial Circuit of Alabama

**WARRANT OF ARREST**  
(Felonies, Misdemeanors, or Violations)

Form C65 (front) Revised 11/92

Case Number

002-1933

IN THE DISTRICT COURT OF MONTGOMERY, ALABAMA  
(Circuit, District, or Municipal) Name of Municipality or County

☒ STATE OF ALABAMA ☐ MUNICIPALITY OF \_\_\_\_\_

v. COURTNEY GREENWOOD Defendant

**TO ANY LAW ENFORCEMENT OFFICER WITHIN THE STATE OF ALABAMA:**

☒ Probable cause has been found on Complaint filed in this Court Against (name or description of person to be arrested)

COURTNEY GREENWOOD

Charging: [description of offense(s)] ROBBERY FIRST DEGREE

in violation of §13A-8-41 Code of Alabama 1975 ; OR

☐ An indictment has been returned by the Grand Jury of this county against (name of person to be arrested)

Charging: [description of offense(s)] \_\_\_\_\_

in violation of \_\_\_\_\_

☒ **YOU ARE THEREFORE ORDERED** to arrest the person named or described above and bring that person before a judge or magistrate of this Court to answer the charges against that person and have with you then and there this warrant with your return thereon. If a judge or magistrate of this Court is unavailable, or if the arrest is made in another county, you shall take the accused person before the nearest or most accessible judge or magistrate in the county of arrest.

☒ You may release the accused person without taking the accused person before a judge or magistrate:

☒ If the accused person enters into a bond in the amount of \$ 30,000.00 with two good sureties approved by an authorized officer or by depositing cash or negotiable bonds in the amount with the court clerk; OR

☒ If the accused person posts an appearance bond in the amount of \$ 30,000.00

☐ On his or her personal recognizance.

April 18, 2002 at 5:11 PM

Date

[Signature]  
Judge/Magistrate/Clerk

Case # 02-008434

## AFFIDAVIT

DISTRICT COURT OF MONTGOMERY ALABAMA

DC02-1933

INSTRUCTIONS: Complete the following information on OFFENSE/OFFENDER

Offense: Robbery 1st DegreeDefendant's Name: Courtney GreenwoodD.O.B. 12/11/79Defendant's SSN: 417-08-0527Height: 5'11"Weight: 135Defendant's Address: 103 Courtland Dr. Montg. Al. 36105Date & Time of Offense: Tuesday 04/09/02 at 2350 HoursPlace of Occurance: 3000 blk of Moorecroft Dr. Montg. Al. 36107Person or Property Attacked: Larry Copeland Jr.How Attacked: Robbed at Gunpoint

Damage Done or Property Attacked: \_\_\_\_\_

Value of Property: \_\_\_\_\_

## Details of Offense:

The defendant approached the victim at the listed location and held an unknown type handgun under his shirt and demanded the victim's property. The victim identified the defendant in a photo line-up. This offense occurred in the City of Montgomery, in Montgomery County and is in violation of 13A-8-41 of the Code of Alabama, against the peace and dignity of the State of Alabama.

I make this affidavit for the purpose of securing a warrant against the said B/M Courtney Greenwood. I understand that I am instituting a criminal proceeding and cannot drop this case. I further understand that if any of the foregoing facts are untrue, I may, in addition to any other punishment provided by law, be taxed with court costs in this proceeding.

Sworn to and subscribed before me  
this 18 day of April 2002

Larry Copeland Jr.  
Complainant

[Signature]  
Judge - Clerk - Magistrate

WITNESSES: (Name, Address, Telephone Number)

- 1) Larry Copeland Jr. [REDACTED]
- 2) Det. N.T. Buice #166 MPD 320 N. Ripley St. Montg. Al. 36104 (334) 241-2963

BR716-3

ALABAMA DEPARTMENT OF CORRECTIONS  
INMATE SUMMARY AS OF 01/27/2003INST: 251  
CODE: CRSJM

EXHIBIT C-1-2-3-45

INMATE: GREENWOOD, KOURTNEY SOVERN RACE: B SEX: M  
INSTITUTION: 251 - MONTGOMERY JAIL CR: 000Y 05M 10D  
DOB: 12/11/1979 SSN: 417-08-0527

ALIAS: GREENWOOD, COURTNEY ALIAS: GREENWOOD, K SOVERN

ALIAS: GREENWOOD, KOURTNEE

ADM DT: 12/30/2002 DEAD TIME: 000Y 00M 00D

ADM TYP: LIFE SENTENCE STAT: LIFE SENTENCE

CURRENT CUST: OTW-9 CURRENT CUST DT: 12/30/2002 PAROLE REVIEW DATE: - NONE -

SECURITY LEVEL: NO CLASSIFICATION RECORD FOUND

SERVING UNDER ACT446 LAW IN CLASS IV CURRENT CLASS DATE: 12/30/2002  
INMATE IS EARNING : PROHIBITED FROM EARNING GOODTIME

COUNTY	SENT DT	CASE NO	CRIME	JL-CR	TERM
MONTGOMERY	12/30/02	N02000909	ROBBERY I	01600	LIFE CS
ATTORNEY FEES : \$000150				HABITUAL OFFENDER : Y	
COURT COSTS : \$0000375				FINES : \$0000000	
MONTGOMERY 12/30/02 N99000453 UNLAWFUL POSSESSION MARIJU				RESTITUTION : \$0000146	
ATTORNEY FEES : \$000150				0602D 010Y 00M 00D CC	
COURT COSTS : \$0000106				HABITUAL OFFENDER : N	
				FINES : \$0000000	
				RESTITUTION : \$0000110	

TOTAL TERM	MIN REL DT	GOOD TIME BAL	GOOD TIME REV	LONG DATE
999Y 99M 99D	00/00/0000			99/99/9999

INMATE LITERAL:

## DETAINDER WARRANTS SUMMARY

INMATE CURRENTLY HAS NO DETAINDER WARRANT RECORDS

## ESCAPEE-PAROLE SUMMARY

INMATE CURRENTLY HAS NO PAROLE RECORDS

INMATE HAS NO ESCAPES FROM ALABAMA D.O.C.  
SINCE J.B.S.C.I.S. RECORDING BEGAN IN 1978

## DISCIPLINARY/CITATION SUMMARY

INMATE CURRENTLY HAS NO DISCIPLINARY/CITATION RECORDS

State of Alabama  
Unified Judicial SystemCASE ACTION SUMMARY  
CONTINUATION

Case Number

CC 99-453

Form C-7

Rev 2/79

Style:

State v/s Courtney Greenwood

Page Number \_\_\_\_\_ of \_\_\_\_\_ Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

6/14/01

Motion of Reconsideration, Modification, Amend /  
alter term of imprisonment

7-16-01

Motion to Review Sentence

8/16/01

Motion for Reconsideration of Probation + Notice  
of Completion of SAP.

State of Alabama  
Unified Judicial SystemCASE ACTION SUMMARY  
CONTINUATION

CC 99-453 GR

Form C-7

Rev 2/79

Style:

State v

Kenneth Greenwood

Page Number

of

Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

9-10-01

Defendant appeared with Wiley Hartley for DOC sentence review. The Court is mindful that Defendant has had a history of chemical addictions and Defendant is advised that this is his FINAL CHANCE to comply with the Court's orders. The matters having been considered it is ORDERED:

1. That Defendant's sentence is suspended and his supervised probation is reinstated and he shall be placed on Level I monitor probation for the first 90 days. Defendant is to report to Probation Officer McCarty upon release from MCDF.

2. That Defendant shall pay \$40.00 per month toward his COMs beginning 11-1-01.

SMG

SALLY GREENHAW, CIRCUIT JUDGE

9-12-01

Probation Release to DOC

8-1-02

A declared delinquent for having been arrested on new charge of Robbery (02-909). A shall remain in delinquent status pending outcome of new charge.

SMG

ALABAMA JUDICIAL INFORMATION SYSTEM CASE: CC 2002 000909.0  
 CASE ACTION SUMMARY  
 CIRCUIT CRIMINAL  
 RUN DATE: 07/24/2002  
 JUDGE: SMG

PRO372  
 PER: DBH  
 AGE: 1

THE CIRCUIT COURT OF MONTGOMERY

STATE OF ALABAMA

VS

GREENWOOD KOURTNEY SOVERN  
 103 COURTLAND DRIVE

MONTGOMERY, AL 36105 0000

ASE: CC 2002 000909.00

DOB: 12/11/1979 SEX: M RACE: B HT: 5 11 WT: 135 HR: EYES:  
 SN: 903070232 ALIAS NAMES: COURTNEY GREENWOOD KOURTNEE GREENWOOD  
 CHARGE01: ROBBERY 1ST CODE01: ROB1 LIT: ROBBERY 1ST TYP: F #: 001  
 OFFENSE DATE: AGENCY/OFFICER: 0030100

DATE WAR/CAP ISS:  
 DATE INDICTED: 07/19/2002  
 DATE RELEASED:  
 BOND AMOUNT: \$30,000.00

DATE ARRESTED: 07/24/2002  
 DATE FILED: 07/24/2002  
 DATE HEARING:  
 SURETIES:

DATE 1: DESC:  
 DATE 2: 08/01/2002 DESC: ARRG

TIME: 0000  
 TIME: 0830 A

TRACKING NOS: GJ 2002 070232 00 /

TYPE: A

DEF/ATY: *Hartley*

TYPE:

00000

*DEAN*  
*0828*

PROSECUTOR:

JOINT CSE: GJ200207023200 CHK/TICKET NO: UNKNOWN GRAND JURY: 232  
 COURT REPORTER: SID NO: 001357047 OPER: DBH  
 STATUS: JAIL DEMAND:

DATE ACTIONS, JUDGEMENTS, AND NOTES

8-1-02

*W. Durant for Arraignment*  
*W. Hartley appointed*

DEFENDANT ARRAIGNED IN OPEN  
 COURT, PLEADS NOT GUILTY.

*yo set 9-5-02 @ 8:30*  
*smg*

9-5-02

*I denied yo - not eligible, set for*  
*trial smg*

9/23/02

*Notice of Discovery*  
*Motion by State to Consolidate*  
*with 02-905 - James Brown granted.*  
*A present for pretrial*  
*smg*

10-18-02



## ACR0369 ALABAMA JUDICIAL INFORMATION CENTER

CASE ACTION SUMMARY  
CONTINUATIONCASE: CC 2002 000909.00  
JUDGE ID: SMGSTATE OF ALABAMA VS GREENWOOD KOURTNEY SOVERN  
DATE ACTION, JUDGMENTS, CASE NOTES

10-30-02

MISTRIAL GRANTED

after a jury was sworn in and heard testimony taken  
SMG  
Circuit Judge

12-11-02

JUDGEMENT IS HEREBY ENTERED  
IN ACCORDANCE WITH THE  
VERDICT OF THE JURY.guilty of Robbery!  
Sentencing 12-30-02  
SMG  
Circuit Judge

## EXHIBIT D.

IN REFERENCE to my case NO# <sup>CC</sup> 02000905 My name is Jamar Brown, On this date and time 11-21-02 I plead out to a crime I had committed, but to my understanding there is a guy by the name of Kourtney Greenwood who I supposedly have as a codefendant but I don't even know of that ~~guy~~ and he is not the person that was even present with me at the time this incident took place. I'll just start like this during my stay in the Montgy, County, Jail whenever I spoke with my lawyer Winston Durant about my cases he always seemed to speak of and ask about this guy ~~name~~ by the name of Kourtney Greenwood but I always told him I didn't even know a guy by that name so I stayed in the County Jail about 9 months so as time went on I went to court and plead guilty to the crimes I had committed, and I noticed at this time the D.A. who name was Perkins and another white ~~guy~~ who I think was a D.A. ~~who name was Perkins~~ along with my lawyer Winston Durant all continuously asked me about the dude Kourtney Greenwood so I told them I did not even know him which I really still do not so while sitting in the 11 cells in the back of the courtroom I was called out several times to talk to my lawyer and that D.A. lady name Ms. Perkins, so on one occasion I was called out to talk to that lady D.A. Perkins and a white guy, so she asked me about Kourtney Greenwood again so I said I keep telling yall I don't know that dude why yall keep

asking me the same thing," so the lady D.A. Perkins said he's not a witness for Kourtney Greenwood is he speaking to the white guy I don't know his name, so the white guy said I don't think so, so I was like witness what, what you all talking bout, so the lady D.A. Perkins said, we mean without you testifying in court for this guy we have a case on this guy, so the lady D.A. said Mr Jamar Brown you work with me I'll work with you then she said I'll see to you getting 20/3 s&p & return or probation, then she said you don't have to worry bout nothing I'm going to talk to the Judge, then she said you have a nice day Mr Jamar Brown I'll see you on the 12th of Dec til then just remember what I said then she left. So I ain't never been in noth. like this before but s&p & return or Probation sounded good, so it was like a day before I went to get sentenced, I was called down to court, so when I got down there it was this other white guy name Hortley or some, I think he was that guy Kourtney Greenwood lawyer, then my lawyer that same D.A. Perkins lady and the other white guy who was with her before came to talk to me bout Testifying for that guy Kourtney Greenwood, so to be honest I was really thinking bout the s&p & return or probation I was told I would get" so I just told them all the truth, that I don't even know a guy by that name probably never seen him before and that he was not the guy that was present with me at

the time I committed these crimes, but then I also said I was not going in that courtroom to testify, and it see like that lady D.A. Perkins knew this was going to happen to me like this but I didn't say nothing," the reason for this letter to whomever it may concern is, I don't know if that guy Kourtney Greenwood went to trial or whatever, but I heard through the jail and from a couple of people I think knew him that he got messed up for some he didn't know anything about", and I Jamar Brown is a witness to that I know for a fact that that guy name Kourtney Greenwood did not commit these crimes and do not know anything about them unless he was told or heard some about it, cause he I know was not the guy who was with me at the time all this trouble occurred I don't know how he ended up in this, but it has to be some mistakes made somewhere you know I sat back for months + months and I look back on how this all happened I think I could have stopped an innocent man out, and believe me I know he's innocent, and if there any way possible to whomever this letter may concern that I can do anything to help this guy out, I will do it, cause I am a changed man myself now and I can't continue to go on with this on my mind, and the good lord has brought me to say this was all wrong from the start, and it has gotten an innocent man in a messed up situation, and I fought myself and that lady D.A. Perkins for the mistake, and I Jamar Brown am willing to testify or do whatever possible right now to not have that innocent

4

man punished for my trouble. To whom ever this may concern  
will you please respond soon.

\* In reference To: Again I Jamar Brown do not even  
know Kourtney Greenwood, and he is not the guy who was  
with me at the time I committed these crimes, and he ~~was~~ as a  
Innocent man is being punished for some he did not do  
an/or knows nothing about, which I fought myself and  
Off. Perkins for this mistake, and I am willing to  
Testify in Kourtney Greenwood behalf or do whatever  
to make things right here to ever it may concern <sup>whom</sup>.

Sincerely,

Jamar Brown Jamar Brown

Notary

State of Ala - Mt. Co.

Sworn to and subscribed before me this 18  
day March 03.

My commission Expires 1-17<sup>th</sup> day of 2006

Deety Stan - Notary Public

Sincerely Jamar Brown <sup>AIS#</sup> 227221

Case# 2002-905

~~EXHIBIT E~~

## MACEO O. KIRKLAND

MACEO O. KIRKLAND, ESQ.

*Attorney at Law*

529 SOUTH PERRY STREET, SUITE 14-A  
MONTGOMERY, ALABAMA 36104  
(334) 261-6200

TELECOPIER  
(334) 261-6201

June 6, 2003

Kourtnee Greenwood AIS# 179810  
Bed# 2-88B  
Donaldson Correctional Facility  
100 Warrior Lane  
Bessemer, AL 35023

**Re: Your application for rehearing and recent correspondence**

Dear Kourtnee:

I have filed your application for rehearing in the Court of Criminal Appeals. I will inform of the outcome of that pleading when the clerk informs me. I have also met with Jamar Brown and he informed me that you were not his accomplice and that he refused to testify on your behalf because Ms. Perkins promised to get him a 20/3 split or probation. These facts are not reflected in the record on appeal, but they could be useful for a Rule 32 petition.

Regarding your insistence for your previous trial transcript, your sentencing transcript, and the consolidation transcripts, enclosed with this letter you will find copies of my motions to the trial judge for all of that. The court reporter who recorded those proceedings must be paid for typing them. I have asked the judge for the money to do so. That's the only way I can get those transcripts. I am doing all I can do, and I don't appreciate being threatened with the Rules of Professional Conduct in your last correspondence.

Sincerely,

*Maceo O. Kirkland*

Maceo O. Kirkland

41

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

KOURTNEE GREENWOOD,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

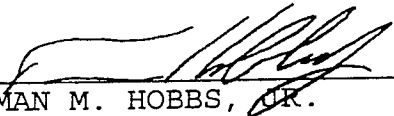
\*  
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\*

CASE NO. CC-02-909.60 TMH

ORDER

This cause is before the Court on a Rule 32 Petition filed by Petitioner. The Court having considered the matter, it is ORDERED that the State is given 30 days from the date of this Order to file a response to said Petition.

DONE this the 29<sup>th</sup> day of September, 2003.

  
TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGE

copies:

CAROL BOONE, ASSISTANT CHIEF  
DEPUTY DISTRICT ATTORNEY

KOURTNEE GREENWOOD  
AIS 179810  
100 WARRIOR LANE  
BESSEMER, AL 35023

**RECEIVED**  
9-30-03  
CIRCUIT COURT CLERK



42

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

KOURTNEY GREENWOOD,  
Petitioner,

vs.

STATE OF ALABAMA,  
Respondent.

}  
}  
}  
}  
}  
}  
}

Case No. CC-02-909.60 TMH

ORDER

This cause is before the Court on a Rule 32 Petition filed by Petitioner. The Court having considered the matter, it is ORDERED that the State is given 30 days from the date of this Order to file a response to said Petition

Done this the 23<sup>rd</sup> day of October, 2003.



TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGE

Copies:

Benjamin E. Schoettker  
Deputy District Attorney

Kourtney Greenwood  
AIS # 179810  
Donaldson Correctional Facility  
100 Warrior Lane  
Bessemer, AL 35023

**RECEIVED**  
10-28-03  
CIRCUIT COURT CLERK

43

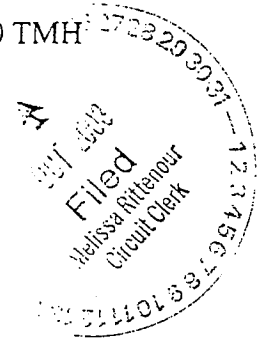
IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

KOURTNEY GREENWOOD,  
Petitioner,

vs.

STATE OF ALABAMA,  
Respondent.

Case No. CC-02-909.60 TMH



MOTION FOR ENLARGEMENT OF TIME

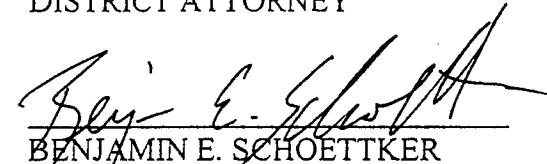
COMES NOW, the State of Alabama by and through its District Attorney for the Fifteenth Judicial Circuit, Eleanor I. Brooks, and respectfully moves this Court, pursuant to Rule 1.3(b) of the Alabama Rules of Criminal Procedure, for enlargement of thirty days from October 17, 2003, within which to file its answer in this case. As grounds in support of this motion the State would offer the following:

- (1) Counsel for the State has been preparing for trials and has been in trial for the week of October 20, 2003 through October 25, 2003.
- (2) Counsel for the State is currently preparing for trials set for the week of October 27, 2003 through October 31, 2003.
- (3) Counsel for the State has not had adequate opportunity to review the issues presented by the Petitioner.
- (4) The interest of justice and fairness and this Court's judicial function will best be served by granting the requested enlargement of time. Likewise, the Petitioner will not be prejudiced if the request for enlargement is granted.

44

WHEREFORE, the premises considered, the State of Alabama respectfully moves this Court for an enlargement of 30 days within which to file its answer, thus making the State's answer due on or before November 17, 2003.


ELEANOR I. BROOKS  
DISTRICT ATTORNEY

  
BENJAMIN E. SCHOETTKER  
DEPUTY DISTRICT ATTORNEY  
15<sup>TH</sup> JUDICIAL CIRCUIT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was served upon the petitioner, Kourtney Greenwood, by placing said copy of the same in the United States Mail, on this the 24<sup>th</sup> day of October, 2003, postage prepaid and properly addresses as follows:

Kourtney Greenwood  
AIS # 179810  
Donaldson Correctional Facility  
100 Warrior Lane  
Bessemer, AL 35023

  
BENJAMIN E. SCHOETTKER  
DEPUTY DISTRICT ATTORNEY  
15<sup>TH</sup> JUDICIAL CIRCUIT

**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA**

**KOURTNEY GREENWOOD,**  
**Petitioner,**

**v.**

**STATE OF ALABAMA,**  
**Respondent.**

)  
)  
)  
)  
)  
)  
)

**CC 02-909.60 TMH**

**ANSWER AND MOTION FOR SUMMARY DISPOSITION**

Comes now the State of Alabama, by and through its District Attorney for the Fifteenth Judicial Circuit, Eleanor I. Brooks, and submits the following answer to the Petitioner's Rule 32 Petition filed on, or about, September 18, 2003.

The Petitioner alleges the following grounds as the basis for said petition:

1. The Court was without Jurisdiction to render the judgment or to impose the sentence.
2. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.
3. Newly discovered material facts exist which requires that the conviction or sentence be vacated by the court.

The state denies each and every material allegation in the Petitioner's petition and demands strict proof thereof.

The petition fails to state a claim on which relief may be granted; and/or the petition fails to raise any material issue of fact or law which would entitle the Petitioner to relief and no purpose would be served by any further proceedings in this matter.

**PROCEDURAL HISTORY**

Petitioner was indicted in July of 2002 for Robbery in the first degree. On December 11th, 2002, a jury in Montgomery County found Petitioner guilty of said offense. Petitioner was sentence December 30, 2003 to a life sentence. Petitioner next filed an appeal in the Court of Criminal Appeals on or about February 6, 2003. The Court of Criminal Appeals affirmed the lower court.

FILED  
Melissa Antenor  
Circuit Clerk

46

### **BASES OF PETITIONERS CLAIMS**

1. The Court was without Jurisdiction to render the judgment or to impose the sentence. Specifically, the Petitioner argues that law enforcement lacked probable cause to make an arrest of Petitioner. As such, Petitioner states that the Court lacked personal jurisdiction over him.

Additionally, Petitioner claims the Court lacks jurisdiction because the indictment is void. Petitioner states that the indictment fails to allege the elements of Robbery in the first degree. In support of this allegation the Petitioner states that in order to have a proper indictment for Robbery in the first degree the indictment must state that the victim suffered serious physical injury.

2. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law. Petitioner argues that he was only subject to one prior for the purposes of the Habitual Offender Act, and that the Court erred in allowing the state to present two (2) priors. Petitioner also claims that his sentence exceeds the maximum allowed because he claims he was indicted for Robbery in the third degree.

3. Newly discovered material facts exist which requires that the conviction or sentence be vacated by the court. The Petitioner attached a copy of what he claims is a hand written affidavit from the Co-Defendant (Jamar Brown) in this case. Petitioner claims that these are new facts that exist that he was unaware of at the time of trial.

### **STATES RESPONSE**

1. With respect to Petitioner's claim of lack of jurisdiction due to his arrest without probable cause the court is very clear. The Alabama Court of Criminal Appeals stated in Sumlin v. State, 710 So .2d 941 (Ala.Crim.App. 1998) that "An illegal arrest claim does not raise the jurisdiction of the court and can be barred from Rule 32 review because it could have been but was not raised at trial or on appeal." Petitioner had a trial in December of 2002 and filed an appeal in February of 2003. Petitioner failed to raise this issue in his appeal and if raised at trial it was unsuccessful. Relying on Sumlin v. State, 1998 WL 32625

(Ala.Crim.App. 1998) Petitioners request for relief on this issue is due to be **DENIED.**

With respect to the Courts jurisdiction the Petitioner raises one other issue. Petitioner argues that the indictment fails to allege the elements of Robbery in the first degree. In support of this allegation the Petitioner states that in order to have a proper indictment for Robbery in the first degree the indictment must state that the victim suffered serious physical injury.

In Shoulders v. State, 703 So.2d 1015, 1018 (Ala. Crim. App. 1997) the Court explains that this is not a valid jurisdictional question by stating "A claim by the petitioner that he was charged with the wrong crime and that the court was, therefore, without jurisdiction to render a judgment or pronounce sentence was really a challenge to the sufficiency of the evidence and was barred."

Even if this claim was a valid jurisdictional question it is without merit. The law in Alabama does not require the defendant to cause serious physical injury to the victim in order to be guilty of Robbery in the first degree. Johnson v. State, 473 So. 2d 607 (Ala. Crim. App. 1985) state that a defendant commits Robbery in the first degree if "in the course of committing a theft he...uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance," and he "is armed with a deadly weapon or dangerous instrument" or "causes serious physical injury to another." It is not necessary for the defendant to cause serious physical injury to be found guilty of Robbery in the first degree. Petitioners request for relief on this issue is due to be **DENIED.**

2. Next the Petitioner argues that the sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law. Petitioner argues that he was only subject to one prior for the purposes of the Habitual Offender Act, and that the Court erred in allowing the state to present two (2) priors. Petitioner also claims that his sentence exceeds the maximum allowed because he claims he was indicted for Robbery in the third degree.

These claims amount to nothing more than bare allegations, unsupported by any facts or argument; thus, Petitioner has failed to meet his burden of

pleading under Rule 32.3 of the Alabama Rules of Criminal Procedure, and the specificity requirements of Rule 32.6 of the Alabama Rules of Criminal Procedure.

Petitioner did have two (2) prior felony convictions for the purposes of the Habitual Felony Act when he committed the Robbery in question. In October of 1994 Petitioner plead guilty to Robbery in the first degree and was sentenced to 15 years in the penitentiary. In August of 1999 Petitioner plead guilty to the charge of Possession of Marijuana in the first degree and was sentenced under the Habitual Felony Act to 10 years split to serve 3 years reverse split postponed 1 year. (see States exhibits 1 and 2) Clearly the Petitioner had two prior felonies on his record when he committed the Robbery in question in April of 2002.

Finally, as to the Petitioners sentence, he argues the indictment charges him with Robbery in the third degree and not Robbery in the first degree. There is no merit to this claim and the only argument made by Petitioner in support is that in order to be convicted of Robbery in the first degree it was required that the State prove serious physical injury to the victim. This argument has already been address in States response number one (1). The State has provided a copy of Petitioners indictment, which will show that he was indicted for Robbery in the first degree. (States Exhibit 3) Petitioners request for relief on these issues are due to be **DENIED**.

3. Petitioners final issue raised is that newly discovered material facts exist which requires that the conviction or sentence be vacated by the court. The Petitioner attached a copy of what he claims is a hand written affidavit from the Co-Defendant (Jamar Brown) in this case. Petitioner claims that these are new facts that exist that he was unaware of at the time of trial.

In order for the Petitioner to meet the definition of "newly discovered evidence" under subsection 32.1 (e), a petitioner must plead and establish five things:

1. That the facts relied on were not known by petitioner or his counsel at the time of trial, at the time of sentencing, in time to file a new trial motion, or in time to be included in a prior



collateral proceeding and they could not have been discovered by any of those times through the exercise of reasonable diligence;

2. The facts are not merely cumulative of facts known to the petitioner or his counsel;
3. The facts do not merely amount to impeachment evidence;
4. If the facts had been known at the time of trial or sentencing, the outcome of the proceeding would have been different; and
5. The facts establish that the petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he received.

Petitioner fails to meet the burden placed upon him by Rule 32.1 (e) to sustain his argument. At the time of trial the Petitioner and his attorney were aware of the Co-Defendant Jamar Brown and could have called him as a witness. Mr. Brown's Affidavit establishes that his story if he would have testified at trial would have been the same then as it is today. Hence, there is no new evidence. Mr. Brown in his affidavit tells us that he spoke with Petitioner's attorney, Wiley Hartley, before Petitioner's trial and told Mr. Hartley exactly what is now contained in Mr. Brown's affidavit. These facts were known at the time of Petitioner's trial and as such are not newly discovered facts. Petitioner's request for relief on this issue is due to be **DENIED**.

### **CONCLUSION**

For the above-stated reasons, the Petitioner is not entitled to relief on any of his claims, and his conviction and sentence are due to be upheld. There is sufficient evidence to support the Petitioner's convictions and sentence. Thus, Mr. Greenwood's petition is due to be denied. Therefore, the Respondent, the State of Alabama, moves this Honorable Court to dismiss, with prejudice, Greenwood's Petition for Post-Conviction Relief.

Respectfully submitted on this the 24<sup>th</sup> day of November 2003.

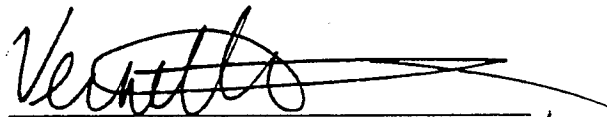
ELEANOR I. BROOKS  
DISTRICT ATTORNEY

Benjamin E. Schoettker (SCH 091)  
Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served upon Kourtney Greenwood by placing a true copy of the same in the United States Mail, first-class postage prepaid and properly addressed to him at AIS# 179810, Donaldson Correctional Facility, 100 Warrior Lane, Bessemer, Alabama 35023 on this the 24<sup>th</sup> day of November, 2003.

ELEANOR I. BROOKS  
DISTRICT ATTORNEY

By:   
Benjamin E. Schoettker (SCH 091) /s/  
Deputy District Attorney

*Vernetta R. Perkins*

CC 94 001286 00

530 N. Union Street  
MONTGOMERY AL 00000-0000

JB: 12/11/79 RACE: B SEX: M HT: 506 WT: 125 HR: EYE:  
SN: 000000000 ALIAS NAMES:

CHARGE1: ROBBERY 1ST CODE1: ROB1 LIT: ROBBERY 1ST TYPE: F  
CHARGE2: CODE2: 0000 TYPE: F  
CHARGE3: CODE3: 0000 TYPE: F  
MORE?: OFFENSE DATE: \_\_/\_\_/\_\_ AGENCY/OFFICER:

DATE WAR/CAP ISS: \_\_/\_\_/\_\_ DATE ARRESTED: \_\_/\_\_/\_\_  
DATE INDICTED: 05/26/94 DATE FILED: 05/31/94  
DATE RELEASED: \_\_/\_\_/\_\_ DATE HEARING: \_\_/\_\_/\_\_  
BOND AMOUNT: \$5,000.00 SURETIES: INDIV

DATE 1: DESC: 0000 TIME: 0000  
DATE 2: 06/08/94 DESC: ARRQ TIME: 0900 A

DEF/ATY: CARTE, TEDDI LANE TYPE: A  
PROSECUTOR: MCNEILL, JAMES RANDALL TYPE:

OTH CSE: 0000000000 CHK/TICKET NO: GRAND JURY: 45  
COURT REPORTER SID NO: 000000000  
DEF STATUS: BOND JURY DEMAND: OPID: PAS

DATE ACTIONS, JUDGMENTS, CASE NOTES

Sept. 27 ✓

6/8/94: W/A filed

6/8/94: App for VOA filed

7-6-94: Attorney's VOA Application Report of Reference

9-27-94: Motion to Set for Sentencing - P.R. wrong Side Road DA

9-27-94: ✓ VOA denied (N) to Defendant

9-27-94: ✓ VOA denied (N) to Defendant

9-27-94:

The defendant comes before the Court, with attorney of record. The Court on the record, fully explained to Defendant all Constitutional rights. The court is convinced that Defendant comes before the Court voluntarily and understands all Constitutional rights. Exhibit A is signed by Defendant and the record fully shows a colloquy between the Judge and Defendant as to Defendant's full and complete understanding of the consequences of a guilty plea and as to all of the matters that a guilty plea effects and the consequences thereof. The Court accepts the guilty plea and finds the defendant guilty and enters a judgment of guilt.

Sentencing date is: Oct 11, 1994 at 8:00 a.m.

Circuit Judge

10-11-94 Result for 10-13-94.

STATE'S  
EXHIBIT

1

File:

Page Number \_\_\_\_\_ of \_\_\_\_\_ Pages

DATE

ROURINEE SOVERN GREENWOOD  
ACTIONS, JUDGMENTS, CASE NOTES

October 13, 1994

The Defendant appears in Court with his attorney of record for sentencing. The Court, having asked the Defendant if he had anything to say as to why the sentence of law should not now be pronounced upon him, and having had his say, the Court sentences the Defendant to fifteen (15) years in the penitentiary.

The Defendant is to successfully complete up to 180 days Disciplinary Rehabilitation Program pursuant to the Act 88-163. When program is successfully completed, Defendant is to be returned to the Court for review. Upon motion of the State with concurrence of the Defendant, the Court retains jurisdiction and reconsideration of this sentence and of V.O.A. if and or when the Defendant successfully completes the 180 Day Disciplinary Rehabilitation Program.

October 13, 1994

Court orders the Defendant to pay attorney's fees of \$150.00, court costs, and \$50.00 to the Victims Compensation Fund. Restitution is to be set at a restitution hearing. These court ordered payments are to be collected by the Department of Corrections from any funds to which the Defendant becomes entitled while in the penitentiary, whether such funds are to his credit in a welfare fund, inmate fund or in any other source whatsoever. An amount equal to one-half of the gross amount of such funds shall be collected by the Department of Corrections and shall be forwarded to the Circuit Clerk of this Court monthly to be disbursed by the Clerk according to law.

returned to the Court for review. Upon motion of the State with concurrence of the Defendant, the Court retains jurisdiction and reconsideration of this sentence and of V.O.A. if and or when the Defendant successfully completes the 180 Day Disciplinary Rehabilitation Program.

JOSEPH D. PHELPS, CIRCUIT JUDGE

11-29-94 Probation Office to see if Def. can be sent to Frank Lee; resit you 12-6-94.

State of Alabama  
Unified Judicial System**CASE ACTION SUMMARY  
CONTINUATION**

Case Number

Form C-7 Rev. 2/79

cc 94 1286  
ID YR NumberStyle: *Kurtman Greenwood*

Page Number \_\_\_\_ of \_\_\_\_ Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

3/13/95

Defendant with attorney appeared for Review and reconsideration sentence. Sentence is ORDERED amended as follows:

1. 15 years split, to serve 2 years at Frank Lee Juvenile Facility with credit for time served.

2. Defendant shall be enrolled in a full time regular school curriculum at Frank Lee Juvenile Facility.

3. Court reserves jurisdiction for YOA determination.

4. Defendant will be placed on 3 years supervised probation following release from that facility.

*Sally Greenhaw*  
SALLY GREENHAW, CIRCUIT JUDGE

CASE ACTION SUMMARY  
CONTINUATION

Case Number

CC 94-128  
10 YR Number

Kourtnee Greenwood

Page Number

DATE

ACTIONS

10-3-96

As probation reinstated. Payment of  
Court ordered monies to begin in  
December at \$20.00/month. Review set  
for 3-6-97, 8:15 for increase pay. at. SM

State of Alabama  
Unified Judicial System

Form C-7

Rev 2/79

CASE ACTION SUMMARY  
CONTINUATION

Case Number

94-1286

Style:

Kaurtha Manab

Page Number \_\_\_\_\_ of \_\_\_\_\_ Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

3-6-97

△ FTA for Review - Reset review 4-24-97. Sme

4-24-97

△ FTA for Review. F+C. Sme



LC. 711.77

Page Number

SMG

CASE ACTION SUMMARY  
CONTINUATION

Case Number

CC  
ID

YR

Number

Page Number

## ACTIONS

15-97 Delinquency report filed by P.O. Officer and based on testimony of P.O. Officer Defendant declared delinquent and ARREST ORDERED for:

- ☒ 1. Failure to report
- ☒ 2. Failure to pay court order monies
- ☐ 3. Failure to pay supervision fees
- ☐ 4. Arrested on new charges
- ☐ 5. Failure to avoid injurious habits
- ☒ 6. FTA
- ☐ 7.
- ☐ 8.
- ☐ 9.

Defendant appeared with attorney and was orally informed of the delinquency charges and also provided with a written statement of the charges, the disclosure of the evidence, the opportunity to be heard, to present witnesses and documentary evidence, to confront and cross-examine witnesses. Defendant ADMITTED charges, or Defendant DENIED charges and a revocation hearing is set for 7-31-99

JUDGE SALLY GREENHAW

8-19-97 Motion to Reconsider Revocation & Probation  
9-2-97 Motion to reconsider probation  
revocation re set 9-4-97 at 8:15  
Jally Greenlaw  
9-4-97 Motion to Reconsider probation  
Revocation was heard this  
date and testimony taken. Defendant  
continues to deny he was told  
to report. It is Ordered that  
Defendant's probation and split sentence  
be revoked and his 15 year sentence  
be invoked for failure to report. ~~to~~  
To be reviewed prior to E.O.S. - place  
hold. SMG

State of Alabama  
Unified Judicial System

Form C-7

Rev 2/79

CASE ACTION SUMMARY  
CONTINUATION

Case Number

94-1286

Style:

Kourtnee Greenwood

Page Number \_\_\_\_\_ of \_\_\_\_\_ Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

9-16-97

Defendant and counsel appeared for Review with the State and Officer Moore present. Defendant testified he would obey the orders of the Court and Probation Officer if given one more opportunity on probation. Ordered:

- 1.) Defendant shall comply with all Court Orders and instruction from Probation Officer Moore.

- 2.) Failure to comply + Defendant probation shall be revoked.

- 3.) Sentence suspended and placed on supervised probation the first portion of which will be served on Level I Monitor.

- 4.) Supervised probation extended 2 years. Sally Greenlaw

1-23-98 Probation Release to Doc

## CASE ACTION SUMMARY

CONTINUATION

$$\begin{array}{r} 94 \\ 5 \overline{) 470} \\ \underline{45} \phantom{0} \\ 20 \phantom{0} \\ \underline{19} \phantom{0} \\ 10 \phantom{0} \\ \underline{10} \phantom{0} \\ 0 \end{array}$$

Kourtnee Greenwood

Page Number

DATE	ACTIONS
11-24-97	Delinquency report filed by P.O. Officer and based on testimony of P.O. Officer <u>Moncrief</u> Defendant declared delinquent and <u>ARREST ORDERED</u> for: <ol style="list-style-type: none"> <li>1. <u>Failure to report</u></li> <li>2. <u>Failure to pay court order monies</u></li> <li>3. <u>Failure to pay supervision fees</u></li> <li>X 4. <u>Arrested on new charges <u>menacing</u></u></li> <li>5. <u>Failure to avoid injurious habits</u></li> <li>6. _____</li> <li>7. _____</li> <li>8. <u>(in City Jail) place a hold</u></li> </ol> <p style="text-align: center;"><u>SMG</u></p>
	Defendant appeared with attorney and was orally informed of the delinquency charges and also provided with a written statement of the charges, the disclosure of the evidence, the opportunity to be heard, to present witnesses and documentary evidence, to confront and cross-examine witnesses. Defendant <u>ADMITTED</u> charges, or Defendant <u>DENIED</u> charges and a revocation hearing is set for _____.
	JUDGE SALLY GREENHAW
12-2-97	<u>Monies Issued</u>
3-07-98	<u>Copies executed; file sent to Judge.</u>
3-16-98	<u>Probation reinstated (P.O. Moore). SMG</u>

CC 94-1286 GR

Rev 2/79

State v

~~Page Number~~

Q1

Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

9-10-21

Defendant appeared with Wiley Hartley for DOC sentence review. The Court is mindful that Defendant has had a history of chemical addictions and Defendant is advised that this is his **FINAL CHANCE** to comply with the Court's Orders. The matters having been considered it is ORDERED:

1. That Defendant's sentence is suspended and his supervised probation is reinstated and he shall be placed on Level I monitor probation for the first 90 days. Defendant is to report to Probation Officer McCarty upon release from MCDF.

2. That Defendant shall pay \$40.00 per month toward his COMs beginning 11-1-01.

J m C

~~SALLY GREENHAW, CIRCUIT JUDGE~~

9-12-01

Probation Release to DOC

~~STATE OF ALABAMA~~

MONTGOMERY COUNTY

I, Melissa Ritterbush, Clerk of the Circuit Court of Montgomery County, hereby certify that the within is a true and correct copy of the Case Action Summary on file in said office.

Witness my hand and the seal of said

Count to 1000

Oct 11

Melissa R. Henson



ALABAMA JUDICIAL INFORMATION SYSTEM

CASE: 00 99 000453.00

CASE ACTION SUMMARY

PDN DATE: 03/10/99

CIRCUIT ORIGINAL

JUDGE: SMC

THE CIRCUIT COURT OF MONTGOMERY

STATE OF ALABAMA

VS.

GREENWOOD COURTNEY  
552 N UNION CIRCLE

CASE: 00 99 000453.00

MONTGOMERY, AL 36104 0000

DOB: 10-11-79 SEX: M RACE: B HT: 5 06 WT: 140 HR: BLK EYES: BRO  
SSN: A17080527 ALIAS NAMES:  
CHARGE1: POSS MARIJUANA 1ST CODE1: VAPF LIT: POSS MARIJUANA TYPE: F  
MORE?: OFFENSE DATE: 10/27/98 AGENCY/OFFICER: MFD LOTFON

DATE VAR/CAP ISS: DATE ARRESTED: 10/27/98  
DATE INDICTED: 03/05/99 DATE FILED: 03/09/99  
DATE RELEASED: 11/09/98 DATE HEARING:  
BOND AMOUNT: \$1,000.00 SURETIES: ~~ETC LARRY~~

DATE 1: DESC: TIME: 0000  
DATE 2: 03/18/99 DESC: ATTY TIME: 1000 A

*Bail Bonds Exp.  
Rapid Bail Bonds*

DEF/ATY: HARTLEY, JOHN W, JR  
PROSECUTOR: DUKES, STEPHEN MARK

TYPE: A

OTH CSE: 9300626400 CHK/TICKET NO:  
COURT REPORTER: SID NO:  
DEF STATUS: BOND DEMAND:

GRAND JURY: 236

OPER: REF

*July 12 ✓*

TRANS DATE	ACTIONS, JUDGEMENTS, AND NOTES	REF
03/10/1999	FILED THIS DATE: 03/09/99	REF
03/10/1999	CHARGE AT FILING OF: POSS MARIJUANA 1ST	REF
03/10/1999	DEFENDANT INDICTED ON: 03/05/99	REF
03/10/1999	BOND SET FOR: \$1000.00	REF
03/10/1999	DEFENDANT ARRESTED ON: 10/27/98	REF
03/10/1999	ATTORNEY FOR DEFENDANT: HARTLEY, JOHN W, JR	REF
03/10/1999	OFFENSE DATE OF: 10/27/98	REF
03/10/1999	DEFENDANT RELEASED ON: 11/09/98	REF
03/10/1999	SET FOR: ATTY APPOINTMENT ON 03/18/99 AT 1000A	REF

*4-7-99 Notice of Discovery is diff. etc*  
*5-24-99 Δ appeared*  
*5-25-99 Δ appeared, set for 40A 6-3-99*  
*5-28-99 Bondsman Process issued to Big Ladyz*  
*6-3-99*

The Court having examined the defendant and considered the report of investigation of the defendant as required by Ala. Code §15-19-1 (1977) it is ORDERED that the defendant's request to be tried as a youthful offender is conditionally denied

SALLY GREENHAW, CIRCUIT JUDGE

*6-21-99 Bondsman's Process Served (Big Ladyz)*

STATE'S EXHIBIT



CC 44-453 GR

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State v

Kourtney Greenwood

Page Number

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Pages

ACTIONS, JUDGMENTS, CASE NOTES

7-8-99

## A ETA pretrial

7-12-99

DEFENDANT FTA FOR  
W & F. ISSUE W.Q.A.

John, L. E. Enlow

7-15-99

Period Issued

8-9-99

Capias executed; file to the Judge (8-10)

8-12-99

$\Delta$  appeared  $E + C$  set aside = 5mg

State of Alabama  
Unified Judicial SystemCASE ACTION SUMMARY  
CONTINUATION

Case Number

CC-9-459 GR

C-7

Rev 2/79

Style: STATE OF ALABAMA VS.

COUNTRY OF PRESERVED

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DATE

ACTIONS, JUDGMENTS, CASE NOTES

Y.O.A GRANTED/DENIED

State's Motion/Nolle Prose Count(s) Count 1 Granted SMC

State's Motion To Dismiss Count(s) \_\_\_\_\_ Granted

State's Motion To Amend Count \_\_\_\_\_ to \_\_\_\_\_ Granted

8/12/99

The Defendant is before the Court and is represented. The Court on record fully explained all Constitutional rights. The Court is convinced that Defendant comes into court voluntarily and understands all his rights. Exhibit A is signed by Defendant and counsel and the record affirmatively shows colloquy between the Judge and Defendant and that Defendant fully and completely understands he is waiving his Constitutional rights and other effects of a guilty plea and the consequences thereof and the sentence that could be imposed. Upon the conclusion of said colloquy the Court accepts the guilty plea and finds Defendant guilty and enters a judgment of guilt to the charge of

Notice of HOA/Drug/Weapon Enhancements given Count 1 per

P.S.I. ORDERED / WAIVED

Sentencing date is 8-16-99 1999 at 8:00 a.m.SMC  
SALLY GREENHAW, CIRCUIT JUDGE

State of Alabama  
Unified Judicial SystemCASE ACTION SUMMARY  
CONTINUATION

Case Number

cc 99-453 GR

nC-7 Rev 2/79

style:

State v

Page Number

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DATE

ACTIONS, JUDGMENTS, CASE NOTES

8/16/99

Defendant & attorney appeared for sentencing.  
Court asked if he/she had anything to say why  
sentence should not now be pronounced and  
Defendant having his/her say, it is ORDERED:

HOA Enhancements Applicable Yes/No  
Defendant Admits \_\_\_\_\_ State Proves \_\_\_\_\_ Priors \_\_\_\_\_

Sentenced to 10 yrs./split to serve 3 yrs.  
✓ reverse split postpone 1 yr review Aug 14, 2000  
Concurrent \_\_\_\_\_ Consecutive \_\_\_\_\_

SUSPENDED YES/NO SUPERVISED/COURT PROBATION  
3 years LEVEL II ✓ Monitor \_\_\_\_\_

ENHANCEMENTS - Weapons first 30 Days years  
Drug - \_\_\_\_\_ years School/Public Housing  
\_\_\_\_\_ years Sale under 18

\$1000/2000 Fine

✓ Remit portion completion SAP  
✓ Driver License suspended 6 mo.

GED \_\_\_\_\_ BootCamp \_\_\_\_\_ /SAP X /Chain Gang \_\_\_\_\_  
Work Release \_\_\_\_\_ Frank Lee \_\_\_\_\_ /Employment \_\_\_\_\_  
Community Service \_\_\_\_\_ hrs.at \_\_\_\_\_ /PO Select  
Review upon completion - Yes \_\_\_\_\_

Other - \_\_\_\_\_

Restitution \$ \_\_\_\_\_ Fine \$ \_\_\_\_\_  
Crime Victim \$25.00/\$50.00/\$ \_\_\_\_\_ Ct.Costs ✓  
Attorneys Fees \$150.00 /Attorney/GAL Fees \_\_\_\_\_  
Payment \$ 50 Mo/Wk Begin 10/1 /99 OR  
1/2 monies earned \_\_\_\_\_ Review \_\_\_\_\_

Defendant advised rt. appeal, credit time served  
Appeal Bd. set \$ 500 JUDGE SALLY GREENHAW

ACTION SUMMARY  
CONTINUATION

CC 99-453  
10 11 12

Ronitree Greenwood

Page Number

DATE

ACTIONS

2-27-99 Delinquency report filed by P.O. Officer and based on testimony of P.O. Officer Defendant declared delinquent and ARREST ORDERED for:

1. Failure to report
2. Failure to pay court order monies
3. Failure to pay supervision fees
4. Arrested on new charges
5. Failure to avoid injurious habits

6. Complete S.A.P.

7.  
8.

W. Hartley

Defendant appeared with attorney and was orally informed of the delinquency charges and also provided with a written statement of the charges, the disclosure of the evidence, the opportunity to be heard, to present witnesses and documentary evidence, to confront and cross-examine witnesses. Defendant ADMITTED charges, or Defendant DENIED charges and a revocation hearing is set for 1-10-00.

SMG

-10-00 Revocation continued to 1-20-00 at 7:30 AM

SMG

-20-00 Continued to 1-24-00

SMG

-24-00 A appeared; Mr Davis from CAPs FTA. On recommendation of P.O. and no objection from the State A is ordered on Work Release beginning 1-25-00 from 7am-6pm M-F. A shall remain delinquent pending hearing on 2-14-00 @ 3am

SMG

State of Alabama  
Unified Judicial SystemCASE ACTION SUMMARY  
CONTINUATION

CC 99-453 GR

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State v Kourtney Greenwood Page Number \_\_\_\_\_ of \_\_\_\_\_ Pages

DATE

ACTIONS, JUDGMENTS, CASE NOTES

2-14-00

Defendant Greenwood appeared with Wiley Hartley and was orally informed of the delinquency charge for failing to successfully complete a substance abuse program. He was provided with a written statement of the charge, the disclosure of the evidence, the opportunity to be heard, to present witnesses, documentary evidence, and to confront and cross examine witnesses.

Defendant requested a hearing, the parties were sworn in and P. O. McCarty testified Defendant was instructed on all rules and regulations of probation. McCarthy stated, by letter to her, Defendant was terminated from CAP for failure to attend the program. Witness Steve Davis from CAP testified Def. had been given several opportunities to enroll or re-enroll and had failed to do so. He also stated he did not know if CAP would be willing to reconsider him for the program again.

Defendant testified he had been in Jackson Hospital on 12/13/99 and shortly thereafter his infant son had been put in the hospital. He further testified he had no positive drug screens, but he could not pay for the screens and they would not allow him to enter CAP nor would they consider re-enrolling him in the program. Defendant stated he also had an offer for a second job at Captain D's if he were allowed to be released.

Ms. LaVon Howard (Defendant's fiancée) testified both the baby and Defendant had been in the hospital but that her Mother would be supervising Defendant at Captain D's if he were released.

Defendant shall remain in delinquent status pending further hearing on 2/22/00 at 8:00 am.

SMG

SALLY GREENHAW, CIRCUIT JUDGE

2-22-00

Defendant appeared with counsel for further hearing on the revocation matter. It is ORDERED:

1. Defendant's probation is reinstated, the first 90 days on Level 2.
2. Defendant shall enroll in CAP or an alternative program which Ms. McCarty is to approve.
3. This is Defendant's last opportunity to comply.

SMG

SALLY GREENHAW, CIRCUIT JUDGE





State of Alabama Unified Judicial System		<b>CASE ACTION SUMMARY</b> CONTINUATION		Case Number CC <u>09-453</u> GR
Form C-7	Rev 2/79			
Style: State v <u>Kourtnee Greenwood</u>		Page Number	of	Pages
DATE	ACTIONS, JUDGMENTS, CASE NOTES			
7/17/00	<p>Defendant Greenwood appeared with Wiley Hartley and was orally informed of the delinquency charge for failure to report. The Court also finds the Defendant has a new Assault 1 charge, has paid nothing on his COMs and did not enroll in CAP. Defendant was provided with a written statement of the charges, the disclosure of the evidence, the opportunity to be heard, to present witnesses, documentary evidence, and to confront and cross examine witnesses. Defendant requested a hearing, the parties were sworn in and P. O. Mills testified Defendant was instructed on all rules and regulations of probation on 2/22/00 when he was placed on Level II probation. Mills stated Defendant has not reported since he was placed on probation, has failed to make any payments toward his COMs; was arrested on a new charge of Assault 1 and failed to enroll in CAP. P. O. Mills recommends Defendant's probation be revoked and his sentence imposed.</p> <p>Defendant testified he didn't report because he had a conflict with P. O. Mills.</p> <p>Upon consideration of the evidence presented by the State, and testimony of P. O. Mills the Court finds Defendant did violate the conditions of his probation for failure to report.</p> <p>Wherefore, it is ORDERED that Defendant's probation is revoked and his split sentence is imposed for failure to report. It is further ORDERED Defendant complete a SAP while at DOC.</p> <p>Defendant advised of his right to appeal.</p> <p><i>Sally Greenhaw</i> SALLY GREENHAW, CIRCUIT JUDGE</p>			
8-31-00	<p>Oral Motion to Reconsider Probation is denied; Defendant has had constant problems while on probation.</p> <p>SMC</p>			
7/13/00	<p>Letter Defendant's motion for Review</p>			
9-13-00	<p>Order Denying Review</p>			
11/13/00	<p>Motion to Compel Discovery Motion to Produce</p>			



**State of Alabama  
Unified Judicial System**

Form C-7

Rev 2/79

**CASE ACTION SUMMARY**  
**CONTINUATION**

Case Number

CC 99-453

**Style:**

State v/s Courtney Greenwood

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[illegible]

State of Alabama  
Unified Judicial SystemCASE ACTION SUMMARY  
CONTINUATIONcc 99-453 GR

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Style:

State v

Kourtnee Greenwood

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DATE

## ACTIONS, JUDGMENTS, CASE NOTES

9-10-01

Defendant appeared with Wiley Hartley for DOC sentence review. The Court is mindful that Defendant has had a history of chemical addictions and Defendant is advised that this is his **FINAL CHANCE** to comply with the Court's Orders. The matters having been considered it is ORDERED:

1. That Defendant's sentence is suspended and his supervised probation is reinstated and he shall be placed on Level I monitor probation for the first 90 days. Defendant is to report to Probation Officer McCarty upon release from MCDF.

2. That Defendant shall pay \$40.00 per month toward his COMS beginning 11-1-01.

SMC

SALLY GREENHAW, CIRCUIT JUDGE

9-12-01

Probation Release to DOC

8-1-02

A declared delinquent for having been arrested on new charge of Robbery (02-909). A shall remain in delinquent status pending outcome of new charge.

SMC

STATE OF ALABAMA  
MONTGOMERY COUNTY

I, Melissa Rittenour, Clerk of the Circuit Court of Montgomery County, hereby certify that the within is a true and correct copy of the Case Action Summary on file in said office.

Witness my hand and the seal of said Court this 30th day of Oct 2002

Melissa Rittenour  
Clerk of Court

THE STATE OF ALABAMA  
MONTGOMERY COUNTY

Circuit Court of Montgomery County, \_\_\_\_\_ JULY \_\_\_\_\_ Term, A.D. 2002

The Grand Jury of said County charge that, before the finding of this indictment,

KOURTNEY SOVERN GREENWOOD, alias  
KOURTNEE S. GREENWOOD, alias  
KOURTNEE SOVENS GREENWOOD, alias  
COURTNEY S. GREENWOOD, alias  
K.S. GREENWOOD, alias  
KOURTNEY S. GREENWOOD, alias  
KOURTNEE SOVERN GREENWOOD, alias  
KOURTNEE SOVENSKY GREENWOOD, alias  
COURTNEY SOVENSKY GREENWOOD, alias  
COURNEY GREENWOOD,

whose name is otherwise unknown to the Grand Jury, did, in the course of committing a theft of lawful currency and/or coinage of the United States of America, of some value, a better description of which is unknown to the Grand Jury, use force against the person of the owner or any person present, Larry Copeland, Jr., with intent to overcome his physical resistance or physical power of resistance, or threaten the imminent use of force against the person of the owner or any person present, Larry Copeland, Jr., with intent to compel acquiescence to the taking of or escaping with the property, while the said Kourtney Sovern Greenwood, alias was armed with a deadly weapon or dangerous instrument, a gun, a better description of which is unknown to the Grand Jury, in violation of Section 13A-8-41 of the Code of Alabama,

against the peace and dignity of the State of Alabama.

**STATE'S  
EXHIBIT**

3  
District Attorney, Fifteenth Judicial Circuit of Alabama

**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA**

**KOURTNEY GREENWOOD,**  
Petitioner,

v.

**STATE OF ALABAMA,**  
Respondent.

)  
)  
)  
)  
)  
)  
)

CC 02-909.60 TMH

**ORDER**

The Court having reviewed the Petitioner's petition for Post-Conviction Relief, filed pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, and the Respondent's Answer and Motion for Summary Dismissal, makes the following findings:

The Petitioner alleges the following grounds as the basis for said petition:

1. The Court was without Jurisdiction to render the judgment or to impose the sentence.
2. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.
3. Newly discovered material facts exist which requires that the conviction or sentence be vacated by the court.

The Petitioner fails to state a claim on which relief may be granted; and/or the petition fails to raise any material issue of fact or law which would entitle the Petitioner to relief and no purpose would be served by any further proceedings in this matter. Petitioner request for relief on all issues is **DENIED**.

Petitioner was indicted in July of 2002 for Robbery in the first degree. On December 11th, 2002, a jury in Montgomery County found Petitioner guilty of said offense. Petitioner was sentence December 30, 2003 to a life sentence. Petitioner next filed an appeal in the Court of Criminal Appeals on or about February 6, 2003. The Court of Criminal Appeals affirmed the lower court.

*after the Court  
noted that the  
State proved  
two prior  
felonies.*

1. The Court finds that it had jurisdiction to render the judgment and to impose the sentence. With respect to Petitioner's claim of lack of jurisdiction due to his arrest without probable cause the law is clear. The Alabama Court of Criminal Appeals stated in Sumlin v. State, 710 So. 2d 941 (Ala.Crim.App. 1998) that "An illegal arrest claim does not raise the jurisdiction of the court and can be barred from Rule 32 review because it could have been but was not raised at trial or on appeal." Petitioner had a trial in December of 2002 and filed an appeal in February of 2003. Petitioner failed to raise this issue in his appeal and if raised at trial it was unsuccessful. Relying on Sumlin v. State, 1998 WL 32625 (Ala.Crim.App. 1998) Petitioners request for relief on this issue is due to be **DENIED.**

With respect to the Courts jurisdiction the Petitioner raises one other issue. Petitioner argues that the indictment fails to allege the elements of Robbery in the first degree. In support of this allegation the Petitioner states that in order to have a proper indictment for Robbery in the first degree the indictment must state that the victim suffered serious physical injury.

In Shoulders v. State, 703 So.2d 1015, 1018 (Ala. Crim. App. 1997) the Court explains that this is not a valid jurisdictional question by stating "A claim by the petitioner that he was charged with the wrong crime and that the court was, therefore, without jurisdiction to render a judgment or pronounce sentence was really a challenge to the sufficiency of the evidence and was barred."

Even if this claim was a valid jurisdictional question it is without merit. The law in Alabama does not require the defendant to cause serious physical injury to the victim in order to be guilty of Robbery in the first degree. Johnson v. State, 473 So. 2d 607 (Ala. Crim. App. 1985) state that a defendant commits Robbery in the first degree if "in the course of committing a theft he...uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance," and he "is armed with a deadly weapon or dangerous instrument" or "causes serious physical injury to another." It is not necessary for the defendant to cause serious physical injury to

be found guilty of Robbery in the first degree. Petitioners request for relief on this issue is due to be **DENIED**.

2. Next the Petitioner argues that the sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law. Petitioner argues that he was only subject to one prior for the purposes of the Habitual Offender Act, and that the Court erred in allowing the state to present two (2) priors. ~~Petitioner also claims that his sentence exceeds the maximum allowed because he claims he was indicted for Robbery in the third degree.~~

These claims amount to nothing more than bare allegations, unsupported by any facts or argument; thus, Petitioner has failed to meet his burden of pleading under Rule 32.3 of the Alabama Rules of Criminal Procedure, and the specificity requirements of Rule 32.6 of the Alabama Rules of Criminal Procedure.

Petitioner did have two (2) prior felony convictions for the purposes of the Habitual Felony Act when he committed the Robbery in question. In October of 1994 Petitioner plead guilty to Robbery in the first degree and was sentenced to 15 years in the penitentiary. In August of 1999 Petitioner plead guilty to the charge of Possession of Marijuana in the first degree and was sentenced under the Habitual Felony Act to 10 years split to serve 3 years reverse split postponed 1 year. Clearly the Petitioner had two prior felonies on his record when he committed the Robbery in question in April of 2002. *on 3/16/99*

Finally, as to the Petitioner's sentence, he argues the indictment charges him with Robbery in the third degree and not Robbery in the first degree. There is no merit to this claim and the only argument made by Petitioner in support is that in order to be convicted of Robbery in the first degree it was required that the State prove serious physical injury to the victim. This argument has already been address above and the Court is satisfied after reviewing the indictment that Petitioner was indicted correctly under Robbery in the first degree. Petitioners request for relief on these issues are due to be **DENIED**.

3. Petitioners final issue raised is that newly discovered material facts exist which requires that the conviction or sentence be vacated by the court. The

Petitioner attached a copy of what he claims is a hand written affidavit from the Co-Defendant (Jamar Brown) in this case. Petitioner claims that these are new facts that exist that he was unaware of at the time of trial.

In order for the Petitioner to meet the definition of "newly discovered evidence" under subsection 32.1 (e), a petitioner must plead and establish five things:

1. That the facts relied on were not known by petitioner or his counsel at the time of trial, at the time of sentencing, in time to file a new trial motion, or in time to be included in a prior collateral proceeding and they could not have been discovered by any of those times through the exercise of reasonable diligence;
2. The facts are not merely cumulative of facts known to the petitioner or his counsel;
3. The facts do not merely amount to impeachment evidence;
4. If the facts had been known at the time of trial or sentencing, the outcome of the proceeding would have been different; and
5. The facts establish that the petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he received.

Petitioner fails to meet the burden placed upon him by Rule 32.1 (e) to sustain his argument. At the time of trial the Petitioner and his attorney were aware of the Co-Defendant Jamar Brown and could have called him as a witness. Mr. Brown's Affidavit establishes that his story if he would have testified at trial would have been the same then as it is today. Hence, there is no new evidence. Mr. Brown in his affidavit <sup>ALERS</sup> tells us that he spoke with Petitioner's attorney, Wiley Hartley, before Petitioner's trial and told Mr. Hartley exactly what is now contained in Mr. Brown's affidavit. These facts were known at the time of Petitioner's trial and as such are not newly discovered facts. Petitioner's request for relief on this issue is due to be **DENIED**.

*Obviously, if Petitioner ~~was~~ is in fact innocent of the robbery, then he ~~can~~ did not participate in the robbery with Brown.*



77

Wherefore, it is hereby ORDERED that the Petitioner's Rule 32 Petition is  
**DENIED.**

Done this the 13 day of Jan, 2003

  
TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGE

cc: Ben Schoettker  
Kourtney Greenwood

note M's  
changes

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA  
JMH  
KOURTNEE GREENWOOD  
PETITIONER  
VS.

78

CASE NO: CC-02-909, 60

STATE OF ALABAMA  
DEFENDANT.

JMH

NOTICE OF INTENT TO SERVE SUBPOENA

TAKE NOTICE THAT UPON THE EXPIRATION OF FIFTEEN (15) DAYS  
OR SUCH OTHER TIME AS THE COURT HAS ALLOWED FROM THE DATE OF  
SERVICE OF THIS NOTICE OF KOURTNEE GREENWOOD WILL APPLY TO  
THE CLERK OF THIS COURT TO ISSUANCE OF THE SUBPOENA DIRECTED  
TO MELISSA RETTENOUR AND WHOSE ADDRESS IS: 251 S. LAWRENCE S  
1 MONTGOMERY COUNTY COURTHOUSE, MONTGOMERY, ALA 36104  
TO PRODUCE THE DOCUMENTS SPECIFIED IN THE SUBPOENA.

KOURTNEE GREENWOOD  
AIS#179810 Dorm B-68  
DONALDSON CORR, FAC  
100 WARRIOR LANE  
BESSEMER, AL 35023

Respectfully Submitted,  
Kourtnee Greenwood  
KOURTNEE GREENWOOD  
100 WARRIOR LANE  
BESSEMER ALABAMA 35023

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT A COPY OF THE PETITIONER NOTICE  
OF INTENT TO SERVE SUBPOENA HAS BEEN SERVED UPON THE RE-  
SPONDENT BY MAILING A COPY OF THE SAME POSTAGE PREPAID AND  
PROPERLY ADDRESSED ON THIS THE 26 DAY OF NOV. 2003, BY HANDING  
IT TO PRISON AUTHORITIES FOR MAILING.

DATED: 11/26 2003.

Kourtnee Greenwood  
KOURTNEE GREENWOOD

SUBPOENA DUCES TECUM

CC-2002-909

Case Number

☒ State of Alabama  
☐ Municipality of \_\_\_\_\_

STATE OF ALABAMA

In the CIRCUIT Courtof MONTGOMERY County[The City/Town of MONTGOMERY]KOURTNEE GREENWOOD

Defendant

TO: MELISSA RITTENOUR Circuit  
 CLERK of MONTGOMERY COUNTY COURTHOUSE

(Address)

251 S. LAWRENCE ST, MONTGOMERY, AL 36104

You are ordered to appear in the above-named court on the following list  
 date, time and place, and bring the following documents, books, or papers or  
 other things to be produced on behalf of the PETITIONER DEFENDANT  
NEED THIS INFO. TO SET OUT BURDEN OF PROOF DUE TO P.

Date: PRIOR TO: PENDING.

RULE 32 Petition  
IN COURT.

Time: \_\_\_\_\_

Place: \_\_\_\_\_

CC-02-909

Things to be Produced: TRANSCRIPT OF MINUTES OF MY SENTENCING ON DEC 31  
2002. / COPIES OF MINUTES TO MY INDICTMENTS: CASE NO# CC-02-909 & DC-02-

This subpoena duces tecum is based upon application of the CRIMINAL 1935  
PROCEEDING LISTED ABOVE. / RULE 17.3 ALA. R. CR. P. / RULE 45 Rule Civil PR  
11/26/03

Date

Clerk's Signature

## RETURN ON SERVICE

I certify that I personally  
 delivered a copy of this order  
 to \_\_\_\_\_  
 on \_\_\_\_\_

\_\_\_\_ Served by Mail

Date Mailed \_\_\_\_\_

\_\_\_\_\_  
 Signature and Title  
 of Process Server

\_\_\_\_\_  
 Signature of Sheriff  
 and/or Deputy Sheriff

PART-2 SUBPOENA DUES TELIM:

THINGS TO BE PRODUCED, CONTINUED CAUSE  
FRONT PAGE to small to hold:

PLEASE PRODUCE:

1. TRANSCRIPT OF MINUTES to AND of my SENTENCING in my CRIMINAL CASE NO# CC-2002-909 ON DECEMBER 30<sup>th</sup>, 2002.
2. COPIES of the MINUTES to my INDICTMENT in my CRIMINAL CASE NO# CC-2002-909 ON July 19, 2002. And COPIES of MINUTES to my INDICTMENT in CASE NO# DC-2002-1932, UPON REASON WHY I WAS NOT INDICTED for that OFFENSE ON July 19, 2002.
3. COPIES of the POLICE REPORTS / INCIDENT REPORTS, AND ANY OTHER INFORMATION THAT WAS FILED in my CRIMINAL CASE NO# DC-2002-1932 by SUPPOSEDLY VICTIM HAROLD FRANKLIN ON MARCH 30<sup>th</sup>, 2002 AND ON April 18, 2002.

'A.1 SUCH PRODUCTION OF DOCUMENTS IS TO TAKE PLACE AT THE PLACE WHERE SUCH DOCUMENTS ARE REGULARLY KEPT. BECAUSE THIS ACTION IS PENDING BEFORE THIS COURT, REQUESTER/PETITIONER FURTHER ASK THIS COURT TO ORDER THE PRODUCTION TO TAKE PLACE BEFORE THE COURT ANSWERS THE RULE 32 PETITION PENDING.

DATED 11/26/03

Kourtnee Greenwood,

## SUBPOENA REQUEST FORM

CC-02-90

Form C-12

Rev. 3/98

IN THE CIRCUIT COURT OF MONTGOMERY AL  
 (Circuit, District or Municipal) (Name of County or Municipality)

Civil: \_\_\_\_\_ v. \_\_\_\_\_  
 Plaintiff Defendant

Juvenile: In the matter of \_\_\_\_\_

Criminal: ☒ State of Alabama

☐ Municipality of \_\_\_\_\_

v. KOURTNEE GREENWOOD  
 Defendant

"Pending"  
 Court Date Prior To One Court Time \_\_\_\_\_ AM/PM Date Requested \_\_\_\_\_

## TO BE COMPLETED BY REQUESTER

The Clerk is requested to issue an Order to Appear (Subpoena) for each of the following witnesses for:

☐ Plaintiff/State ☒ Defendant ☐ Grand Jury ☐ Other

Date Issued

Date Executed

1. Name JAMAR BROWN AIST# 227221  
 Home Address \_\_\_\_\_  
 Telephone Number ALA D.O.C. Zip \_\_\_\_\_  
 Alternate Address \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone Number \_\_\_\_\_

11/26/03  
 Remarks: BURDEN OF PROOF, THIS GUY IS INCARCERATED IN ALA. D.O.C SOMEWHERE, PLEASE LOCATE AND ISSUE A SUBPOENA WARRANT ON HIM

2. Name DEVEN GREENWOOD  
 Home Address 2437 EAST 6TH STREET, MONTGOMERY, AL Zip 36106  
 Telephone Number 334-262-2499  
 Alternate Address 911 S. UNION STREET, MONTGOMERY, AL Zip 36104  
 Telephone Number 334-262-2499

11/26/03  
 Remarks: TO HELP SET OUT MY BURDEN OF PROOF.

3. Name DEMETRIUS DAVIS  
 Home Address 2437 EAST 6TH STREET, MONTGOMERY, AL Zip 36106  
 Telephone Number 334-262-2499  
 Alternate Address 912 S. UNION STREET, MONTGOMERY, AL Zip 36104  
 Telephone Number 334-262-2499

11/26/03  
 Remarks: TO HELP SET OUT MY BURDEN OF PROOF.

4. Name Edward Scott  
 Home Address 720 GENETTA CT, MONTGOMERY, AL Zip 36104  
 Telephone Number 334-834-5959  
 Alternate Address \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone Number 334-834-5959

11/26/03  
 Remarks: TO HELP SET OUT MY BURDEN OF PROOF.

5. Name LAVANE HOWARD  
 Home Address 3923 WOODLEY ROAD APT-102, MONTGOMERY, AL Zip 36116  
 Telephone Number 334-240-8043  
 Alternate Address \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone Number \_\_\_\_\_

11/26/03  
 Remarks: TO HELP SET OUT MY BURDEN OF PROOF.

## METHOD OF SERVICE REQUESTED:

☐ Personal ☒ Other CRIMINAL PROCEDURE

Party Requesting Subpoena

KOURTNEE GREENWOOD  
Kourtnee Greenwood

Signature

ALA. D.O.C.

Requester Phone Number

6. NAME Kimberly GREENWOOD

DATE ISSUED,  
11/26/03

DATE EXCISE

HOME ADDRESS 2437 EAST 6<sup>th</sup> Sixth STREET  
MONTGOMERY, AL ZIP 36106

TELEPHONE NUMBER <sup>334-</sup>262-2499

REMARKS: TO HELP SET OUT  
MY BURDEN OF PROOF.

7. NAME MABLE GREENWOOD

11/26/03

HOME ADDRESS 2437 EAST 6<sup>th</sup> Sixth STREET,  
MONTGOMERY, AL ZIP 36106

TELEPHONE NUMBER 334-262-2499

REMARKS: TO HELP SET  
OUT MY BURDEN OF  
PROOF.

8. NAME Edgar & JOANN GREENWOOD

11/26/03

HOME ADDRESS 103 COURTLAND DRIVE,  
MONTGOMERY, AL ZIP 36105

TELEPHONE NUMBER 334-269-9158

REMARKS: TO HELP SET OUT  
MY BURDEN OF PROOF.

9. NAME KATRINA GREENWOOD

11/26/03

HOME ADDRESS 2437 EAST 6<sup>th</sup> Sixth STREET,  
MONTGOMERY, AL ZIP 36106

TELEPHONE NUMBER 334-262-2499

REMARKS: TO HELP SET OUT  
MY BURDEN OF PROOF.

10. NAME PATRICIA WILSON

11/26/03

HOME ADDRESS 248 WEST SOUTH Blvd,  
MONTGOMERY, AL ZIP 36105

TELEPHONE NUMBER 334-613-3828

REMARKS: TO HELP  
SET OUT MY BURDEN  
OF PROOF.

Respectfully Submitted,  
Kourtnee Greenwood

KOURTNEE GREENWOOD.



IN THE CIRCUIT COURT OF MONTGOMERY  
COUNTY, ALABAMA.

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KOURTNEE GREENWOOD  
PETITIONER,

CASE NO<sup>#</sup> CC-02-909

VS.

STATE OF ALABAMA  
RESPONDENTS,

DECLARATION OF MAILING

I CERTIFY THAT ON THIS THE 26<sup>th</sup> DAY OF  
NOVEMBER, 2003, I HAVE PLACED IN THE IN-  
STITUTIONAL MAIL BOX, THE PETITIONERS ARGUM-  
ENT WITH CERTIFIED FIRST CLASS POSTAGE PRE-  
PAID AND PROPERLY ADDRESSED PURSUANT TO  
HOUSTON VS. LACK, 487 U.S. 266, 101 L. ED 2d 24  
108 S. CT 2379 (1988); EX PARTE POWELL, 674 SO.  
1258 (ALA. 1995)

DATED 11/26 . 2003

Respectfully Submitted

Kourtnee Greenwood  
KOURTNEE GREENWOOD

WITNESSES:

Robert James Aine 109986

James L. Aine 196307

Math W. Aine 151161



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY ALABAMA

TMH

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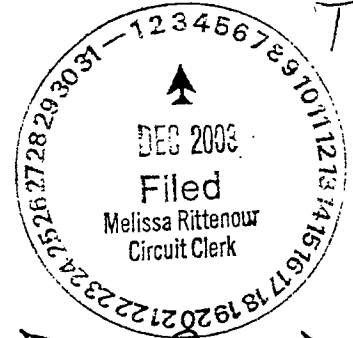
ROBERTA GREENWOOD  
PETITIONER PROSE

VS.

CASE NO: CC-02-909,60

TMH

STATE OF ALABAMA COUNTY  
RESPONDENTS.



MOTION OF DEFAULT

COMES NOW THE PETITIONER IN THE ABOVE STYLED CALL-  
BE, AND SHOWS THE FOLLOWING:

ON SEPTEMBER 29<sup>th</sup>, 2003, THIS COURT ISSUED AN ORDER DELEC-  
ING THE STATE OF ALABAMA THE RESPONDENTS TO RESP-  
DUSE TO PETITIONER RULE 32 PETITION.

ON OCTOBER 23<sup>rd</sup>, 2003, THE COURT ISSUED ITS SECOND  
ORDER ACCORDING TO RULE 32.7 (A), THE DISTRICT ATTORNEY  
HAVE (30) DAYS TO RESPONSE MORE THAN 60 DAYS HAVE ELAPSE  
SINCE THE DATE ON WHICH THIS PETITION WAS FILED.

WHEREAS, UP TO THIS DATE NOVEMBER 26<sup>th</sup> 2003, THE RESPOND-  
ENTS HAS FAILED TO COMPLY WITH TWO COURT ORDERS DATED  
SEPTEMBER 29<sup>th</sup>, 2003 AND OCTOBER 23<sup>rd</sup>, 2003;

FACTS

THE STATE OF ALABAMA, RESPONDENTS HAS FAILED TO CO-  
PLY BY RULE 32.7 (A) A.R.C.P., CONSTITUTED BY WAY OF  
ANSWER TO COURT ORDER.

PLEADING  
THIS PETITIONER ARGUES THE STATE OF ALABAMA (RESPONDENTS) HAVE AND HAS CAUSED DELAYED COURT PROCEDURES, HEREAFTER, SINCE THE (RESPONDENTS) FAILED TO MAKE A RESPONSIVE ANSWER TO THE TWO COURT ORDER;

THE CLAIMS, ISSUES, AND ALLEGATIONS OF THE PETITIONER PLEADINGS ARE TO BE TAKEN AS TRUE, LEAVING THE RESPONDENTS IN THE POSITION AS TO HAVING WAIVED FORMAL DEFENSE EX PARTE FLOYD, 457 So.2D 961 962 (ALA. CR. APP. 1984)

THE RESPONDENTS CANNOT DENY THE TRUTH, THIS COURT HAVE ISSUED TWO ORDER, SEPTEMBER 29<sup>th</sup>, 2003, AND OCTOBER 3<sup>rd</sup>, 2003. THEREFORE, THE RESPONDENTS HAS HAD AMPLE TIME TO MAKE PROPER ANSWER BY RULE 32, 7 (A), A. R. CR. P.

AS SHOWN BY THE PETITIONER THE RESPONDENTS ACTION INEXCUSABLE, THEREFORE, THIS COURT CAN REACH THE MERITS OF PETITIONER CLAIMS, BOATWRIGHT, 471 So.2D 1257 (ALA. CR. APP. 1985).

### RELIEF

- (A). THE CONVICTIONS AND SENTENCE ARE DUE TO BE VACATED BY THIS HONORABLE COURT;
- (B). PETITIONER BE GIVEN A NEW TRIAL;
- (C). GRANT PETITIONER AN EVIDENTIARY HEARING;
- (D). THIS HONORABLE COURT RULE THAT ALL THE FACT IN PETITIONER RULE 32, HAVE MERIT AND ARE TRUE;
- (E). GRANT PETITIONER'S MOTION FOR DEFAULT.

HEREFORIN, AS: JUDGES, WHERE THE STATE OF ALABAMA (RESPONDENTS) HAS NOT MADE PROPER ATTEMPTS TO REBUT THE FACTS, AS RELATED BY THIS PETITIONERS. RULE 32, THIS COURT HAS NO ALTERNATIVE BUT TO TAKE AND CONSIDER THIS "MOTION OF DEFAULT" SUFFICIENT AND GRANT THIS PETITIONER RELIEF SOUGHT.

NOTARY James A. Beacham

Sworn To and Subscribed before me this 26 day Nov 2003

My Commission Expires:

MY COMMISSION EXPIRES  
SEPTEMBER 25, 2004

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS THE 26<sup>th</sup> DAY OF NOV 2003, HAVE SERVED A COPY OF THE FOREGOING UPON THE CIRCUIT COURT OF MONTGOMERY ALABAMA BY PLACING A COPY OF THE SAME IN THE U.S. MAIL WITH FIRST CLASS POSTAGE PREPAID AND PROPERLY ADDRESSED.

Respectfully Submitted,

Kourtnee Greenwood

KOURTNEE GREENWOOD  
100 WARRIOR LANE  
BESSEMER ALABAMA 35023

KOURTNEE GREENWOOD  
AIS#179810 Dorm B-68  
DONALDSON CORR, FAC  
100 WARRIOR LANE  
BESSEMER, AL  
35023

HON: TRUMAN Hobbs

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

KOURTNEE GREENWOOD,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

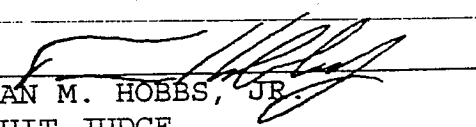
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\*

CASE NO. CC-02-909.60 TMH

ORDER

This cause is before the Court on a Rule 32 Petition filed by  
Petitioner. The Court having considered the matter, it is ORDERED  
that the State is given 30 days from the date of this Order to file  
a response to said Petition.

DONE this the 29<sup>th</sup> day of September, 2003.

  
TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGE

copies:

CAROL BOONE, ASSISTANT CHIEF  
DEPUTY DISTRICT ATTORNEY

KOURTNEE GREENWOOD  
AIS 179810  
100 WARRIOR LANE  
BESSEMER, AL 35023

DOCUMENT - 2

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

KOURTNEY GREENWOOD,  
Petitioner,

vs.

STATE OF ALABAMA,  
Respondent.

Case No. CC-02-909.60 TMH

ORDER

This cause is before the Court on a Rule 32 Petition filed by Petitioner. The Court having considered the matter, it is ORDERED that the State is given 30 days from the date of this Order to file a response to said Petition.

Done this the 23<sup>rd</sup> day of October, 2003.

  
TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGE

Copies:

Benjamin E. Schoettker  
Deputy District Attorney

Kourtney Greenwood  
AIS # 179810  
Donaldson Correctional Facility  
100 Warrior Lane  
Bessemer, AL 35023

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY ALA.

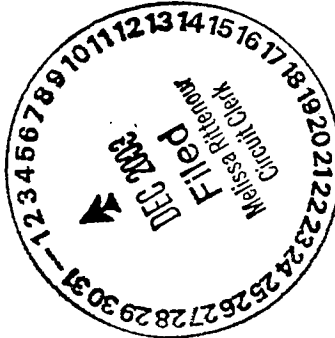
KOURTNEE GREENWOOD

PETITIONER,

VS.

STATE OF ALABAMA

RESPONDENT.



CASE NO# CC-2002-900

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MOTION FOR APPOINTMENT OF COUNSEL.

COMES NOW THE PETITIONER KOURTNEE GREENWOOD, AND MOVES THIS HONORABLE COURT PURSUANT TO THE 6<sup>th</sup> AMENDMENT OF THE UNITED STATES CONSTITUTION AND RULE 32.7 (C) OF THE ALABAMA RULES OF CRIMINAL PROCEDURE AND SHOW UNTO THIS COURT THE FOLLOWING:

1. WHILE INCARCERATED HERE AT DONALDSON CORR. FACILITY, PETITIONER IS SEEKING EDUCATION AND TRADE, AND CURRENTLY ATTEND LAW CLASSES THAT TAKE PLACE, PETITIONER IS UNLEARNED, UNTRAINED AND LACK THE ABILITY TO CONDUCT AN EVIDENTIARY HEARING.
2. PETITIONER, WAS AIDED WITH HELP IN PREPARING THIS RULE 32 PETITION,

AND IS IN NEED OF APPOINTMENT OF COUNSEL TO HELP PROTECT MY RIGHTS, AND REPRESENT ME, TO HELP ME SET OUT THE FACTS TO MY ISSUES INVOLVED, TO MEET THE BURDEN OF PROOF AS SET OUT IN RULE 32.3 OF THE ALABAMA RULES OF CRIMINAL PROCEDURE.

3. THE PETITIONER IS UNLEARNED IN THE AREA OF POST CONVICTION, AND IN MOST ALL AREAS OF CRIMINAL LAW, AND LACKS THE UNDERSTANDING OF THE AMERICAN JURISPRUDENCE SYSTEM.

4. THE APPOINTMENT OF COUNSEL WILL ALSO ASSURE THAT THE PETITIONER RECEIVE A FULL AND FAIR HEARING AS PROVIDED BY THE 6<sup>th</sup> AND 14<sup>th</sup> AMENDMENTS TO THE UNITED STATES CONSTITUTION.

5. THE APPOINTMENT OF COUNSEL WILL ALSO ASSURE THAT THE PETITIONER HEARING WILL NOT RESULT INTO A MISCARRIAGE OF JUSTICE.

WHEREFORE, THE PETITIONER PRAYS THAT THIS HONORABLE COURT WILL GRANT THIS MOTION FOR APPOINTMENT OF COUNSEL BASED ON THE



FACTS ABOVE.

Respectfully Submitted,

Kourtnee Greenwood

KOURTNEE GREENWOOD

AI5 #179810 Dorm B-Bed-68

DONALDSON CORR, FACILITY

100 WARRIOR LANE

BESSEMER, AL 35023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE SERVED A COPY OF THE FOREGOING ON THE DISTRICT ATTORNEY BY PLACING SAID IN THE UNITED STATES MAIL POSTAGE PREPAID AND PROPERLY ADDRESSED THIS 26<sup>th</sup> DAY OF NOVEMBER 2003. 2003.

Kourtnee Greenwood

KOURTNEE GREENWOOD

CC: ELLEN BROOKS, DISTRICT ATTORNEY.

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KOURTNEE GREENWOOD  
PETITIONER (PROSE)

VS.

CASE NO: CC 02 909.60 TM

STATE OF ALABAMA  
RESPONDENT

PETITIONER'S RULE 32.3 A.R.C.P. "TRAVERSE" TO STATES  
RESPONSE

COMES NOW "KOURTNEE GREENWOOD" (PETITIONER) AND  
HEREBY IN A PREPONDERANCE OF THE EVIDENCE AS PER  
"D BY RULE 32.3 "ALABAMA RULES OF CRIMINAL PROCEDURE"  
MAKES TRAVERSE TO THE STATES LATE RESPONSE TO THE RULE  
32 PETITION FILED IN THE ABOVE STYLED CAUSE AS FOLLO  
TO LIST:

(1)

THE MONTGOMERY COUNTY PROSECUTORS NOVEMBER 24  
2003. RESPONSE HEREIN IS OUT OF TIME WITH THE REQ  
UIREMENT OF RULE 32.7(A) A.R.C.P. AND IS OUT OF-IT  
WITHOUT CAUSE THEREFORE, PETITIONER MOVES THIS COURT  
TO STRIKE THE PROSECUTORS LATE RESPONSE AS HAVING  
NO FORCE.

PETITIONER ARGUES THAT THE CERTIFICATE OF SERVICE  
OF THE PROSECUTOR DATED NOVEMBER 24, 2003, MOTION FOR  
SUMMAR DISPOSITION, BUT WAS NOT POST MARK UNTIL  
DECEMBER 3, 2003. THERE IS NO VERIFICATION ARE ANY SIG  
NATURE OF THE PROSECUTORS, PETITIONER MOVES THIS COURT  
STRIKE THIS AS NOT HAVING BEEN FILED AT THE 10. 10. 2003 A

(2)  
THE PETITIONER ARGUES WITH RESPECT TO THE RESPONDENTS OUT OF TIME RESPONSE TO HIS ARREST WITHOUT PROBABLE CAUSE?

PETITIONER ARGUES THAT THE PROSECUTOR IS MISLEADING THE COURT CONCERNING THE ILLEGAL ARREST CLAIM NOT RAISE THE JURISDICTION OF THE COURT AND CAN BE BAR FROM RULE 32 REVIEW BECAUSE IT COULD HAVE BEEN BUT WAS NOT RAISED AT TRIAL OR ON APPEAL 32.2(A)(3) AND (A)(5).

PETITIONER ARGUES THAT THE ARREST WAS BASED ON AN ARREST WARRANT AND AFFIDAVIT THAT WAS NOT BASED ON ANY PROBABLE CAUSE. THE AFFIDAVIT AND WARRANT ISSUED FOR THE PETITIONER ARREST ONLY TRACKS THE STATUTORY LANGUAGE OF SECTION 13A-8-41 OF THE CODE OF ALABAMA, WHICH RENDER IT INSUFFICIENT TO SUPPORT THE ARREST WARRANT. SEE: DAVIS VS. STATE, 500 So.2D 472.

(3)

THE PETITIONER ARGUES WITH THE RESPECT TO THE RESPONDENTS OUT OF TIME RESPONSE TO HIS INDICTMENT FAILS TO ALLEGE THE ELEMENTS OF ROBBERY IN THE FIRST DEGREE?

PETITIONER ARGUES THAT THE PROSECUTOR IS MISLEADING THE COURT CONCERNING THE VOID INDICTMENT PETITIONER FILED A RULE 32 PETITION WITH THIS TRIAL COURT REQUESTING RELIEF ON HIS EXCESS SENTENCE OF LIFE ON THE GROUNDS THAT HIS INDICTMENT ONLY CHARGES THIRD DEGREE ROBBERY BECAUSE THE UNDERLYING CHARGE USED TO ENHANCE PETITIONER INDICTMENT TO FIRST DEGREE ROBBERY WHICH IS THE FIRST REBUTEMENT OF FIRST DEGREE ROBBERY 3A-8-41, CODE OF ALA. 1975.

A PERSON WHO COMMITTS THE CRIME OF ROBBERY  
IN THE FIRST DEGREE IF HE VIOLATES SEC-  
TION 13A-8-43, CODE OF ALA. 1975;

THE STATE OF ALABAMA RESPONDES AND REQUESTS DISMISSAL OF  
THE CHARGE THAT THE VICTIM SUFFERED SERIOUS PHYSICAL INJURY.  
THE STATE OF ALABAMA RESPONSE IS A MISREPRESENTATION OF  
PETITIONER CLAIM. AS A MATTER OF LAW THE NEW APPLICATION  
OF LAW IN ALABAMA APPLYING THE MERGER DOCTRINE.

PETITIONER ARGUES THE ALABAMA COURT OF CRIMINAL APPEALS  
RECOGNIZED AND ESTABLISHED AS A MATTER OF LAW IN ITS DECISION  
OF DICK VS. STATE, 677 So. 2D 1267 (ALA. CR. APP. 1996), THAT  
THE ESSENTIAL ELEMENT USED TO ENHANCE THIRD DEGREE ROBBERY  
TO FIRST DEGREE ROBBERY WAS ALSO AN ELEMENT OF BOTH THIRD  
AND FIRST DEGREE ROBBERY.

"AS A MATTER OF LAW WIELDING A GUN  
CONSTITUTES BOTH USE OF FORCE AND THREAT  
OF FORCE REQUIRED FOR THIRD DEGREE ROBBERY," IN DICK SUPRA.

PETITIONER ARGUES THAT THE STATE OF ALABAMA IGNORES THE  
MERGER DOCTRINE BARS THE USE OF AN UNDERLYING FELONY  
DIRECTLY RESULTS IN OR IS AN INTEGRAL PART OF THE CRIME  
STATUTE AT ISSUE OR CHARGED. SEE BARRETT VS. STATE, 783 So.  
2D AT PAGE 930 (ALA. CR. APP. 2000).

PETITIONER FIRST DEGREE ROBBERY INDICTMENT IS PREMISED  
ON THE UNDERLYING FELONY OF THIRD (3RD) DEGREE (SEE  
3A-8-43, ALA. CODE 1975). WHICH AS A MATTER OF LAW ACCORDING TO  
ALABAMA COURT OF CRIMINAL APPEALS IN DICK SUPRA, INCLUDES  
THE POSSESSION OF A GUN.

PETITIONER ARGUES THAT EVEN THOUGH DICK DECISION WAS  
A MATTER OF FIRST IMPRESSION BUT, IT CLEARLY MANDATES THAT  
WHEN A THIRD DEGREE ROBBERY OCCURS WITH A GUN AND NO  
PHYSICAL INJURY OCCURS, THE STATUTES MERGER USING THE

THE SAME ELEMENT OF THE INSTRUMENT TO ADMIT THE ROBBERY WHICH THE GUNS CANNOT SERVE AS AN UNDERLYING FELONY. FOR THE PURPOSE OF ENHANCING THIRD ~~DEGREE~~ DEGREE ROBBERY ACT FIRST DEGREE ROBBERY,

95

(4)

PETITIONER ARGUES WITH THE RESPECT TO THE PROSECUTORS OUT OF TIME RESPONSE TO THIS SENTENCE IMPOSED EXCEEDS THE MAXIMUM AUTHORIZED BY LAW BECAUSE HE HAD (2) PRIORS IS WITHOUT MERITS AND SHOULD BE STRIKE FROM THE RECORD AS HAVING NO FORCE OF THE LAW.

PETITIONER ARGUES THAT THE PROSECUTOR HAS MERELY MADE BROAD GENERAL ARGUMENTS THAT DO NOT ADDRESS THE PETITIONER SPECIFIC CLAIMED AND THEREFORE THE STATE HAS FAIL TO REFUTE PETITIONER FACTS AND BY LAW THOSE FACTS MUST BE TAKEN AS TRUE. OSBORN VS. STATE, 689 So.2D 999 AT 1000 [3] (ALA. CR. APP. 1996).

PETITIONER ARGUES THAT THE RECORD IS CLEAR THAT THE STATE SPOND IS OUT OF TIME WITHOUT CAUSE AND HAVE PREJUDICED YOUR PETITIONER BY NOT GIVING THE PETITIONER THE NOTICE HE NEEDS TO ATTEMPT TO FORMULATE ARGUMENTS AND PRESENT EVIDENCE TO DISPROVE THE EXISTENCE OF THOSE GROUNDS BY A PREPONDERANCE OF THE EVIDENCE.

(5)

PETITIONER ARGUES TO THE STATE OUT OF TIME RESPONSE IS NOT VERIFIABLE ARE ANY SIGNATURE OF ANY PROSECUTORS SHOULD BE DISMISS AS HAVING NO FORCE OF THE LAW, SEE EXHIBIT, PAGE 6

WITH RESPECT TO THE PETITIONER ISSUE RAISED ABOUT NEWLY DISCOVERED EVIDENCE PETITIONER ARGUES THAT ON THE DATE OF HIS TRIAL JAMAR BROWN WAS CALLED DOWN TO TESTIFY BY MY ATTORNEY JOHN W. HARTLEY WHICH AT THAT TIME HE REFUSED TO SEE TRANSCRIPT OF RECORDS VOL 2 OF 2 PAGE 206-207.

PETITIONER IS ARGUES AS NEWLY DISCOVERED EVIDENCE IS THE OVER WHELMING FACTS THAT ARE NOT REFLECTED ON THE RECORD OF APPEAL AND OR TRIAL TRANSCRIPT THE FACTS ARE STATED



AS FOLLOW JAMAR BROWN STATED THE REASON HE DID NOT TESTIFY AT TRIAL WHEN CALLED TO BY PETITIONER ATTORNEY JOHN HARTLEY WAS BECAUSE HE WAS PROMISED 20/3 YEARS SENTENCE AND RETURN OR PROBATION FOR HIS COOPERATION WITH THE STATE DISTRICT ATTORNEY PERKINS AND NOW MR. JAMAR BROWN IS WILLING TO TESTIFY TRUTHFULLY SEE MR. JAMAR BROWN AFFIDAVIT. THESE OVERWHELMING CIRCUMSTANCES WERE NOT KNOWN BY PETITIONER OR PETITIONER COUNSEL AT THE TIME OF ANY PREVIOUS COLLATERAL PROCEEDINGS.

PETITIONER ARGUES THAT THE FACTS ARE NOT MERELY CUMULATIVE TO OTHER FACTS THAT WERE KNOWN; THE FACTS DO NOT AMOUNT TO IMPERCHMENT EVIDENCE IF THE FACTS HAD BEEN KNOWN AT THE TIME OF TRIAL OR SENTENCING THE RESULT PROBABLY WOULD HAVE BEEN DIFFERENT AND THE FACTS ESTABLISH THAT THE PETITIONER IS INNOCENT OF THE CRIME FOR WHICH PETITIONER WAS CONVICTED OR SHOULD NOT HAVE RECEIVED THE SENTENCE THAT PETITIONER RECEIVED.

PETITIONER ARGUES THAT DUE TO THE OVERWHELMING CIRCUMSTANCES INVOLVED THE AFFIDAVIT FROM MR. JAMAR BROWN HIGHLY SIGNIFICANT. THE STATE OF ALABAMA DISTRICT ATTORNEY OFFICE DEPRIVED YOUR PETITIONER OF A FULL AND FAIR TRIAL, VIOLATING PETITIONER 6<sup>TH</sup> AND 14<sup>TH</sup> AMEND. COMPULSORY PROCESS OF OBTAINING WITNESSES AND OF DUE PROCESS. SEE HIGHLIGHT ON AFFIDAVIT;

THEREFORE PETITIONER PRAYS THAT AS A MATTER OF LAW THIS COURT PROPERLY APPLY THE LAW AS THIS OUT OF TIME AND ~~AND~~ ~~AND~~ AND WITH NO SIGNATURE MOTION TO DISMISS FROM THE STATE OF ALABAMA AS HAVING NO FORCE OF THE LAW AND IN THE ALTERNATIVE LET THIS MATTER DOWN FOR AN EVIDENTIARY HEARING.

DOVE THIS 5<sup>TH</sup> DAY OF DEC 2008.

AIS#179810  
B-68

Kourtnee Greenwood

KOURTNEE GREENWOOD  
100 WARRIOR LANE

PRICHARD ALABAMA 36977

*Exhibit - A* *PROSECUTOR* *SIGNATURE ON P-6.*

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IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA

KOURTNEY GREENWOOD,  
Petitioner,

v.

STATE OF ALABAMA,  
Respondent.

CC 02-909.60 TMH

ANSWER AND MOTION FOR SUMMARY DISPOSITION

Comes now the State of Alabama, by and through its District Attorney for the Fifteenth Judicial Circuit, Eleanor I. Brooks, and submits the following answer to the Petitioner's Rule 32 Petition filed on, or about, September 18, 2003.

The Petitioner alleges the following grounds as the basis for said petition:

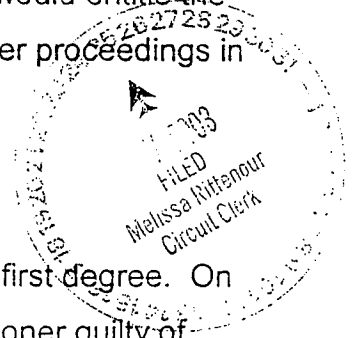
1. The Court was without Jurisdiction to render the judgment or to impose the sentence.
2. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.
3. Newly discovered material facts exist which requires that the conviction or sentence be vacated by the court.

The state denies each and every material allegation in the Petitioner's petition and demands strict proof thereof.

The petition fails to state a claim on which relief may be granted; and/or the petition fails to raise any material issue of fact or law which would entitle the Petitioner to relief and no purpose would be served by any further proceedings in this matter.

PROCEDURAL HISTORY

Petitioner was indicted in July of 2002 for Robbery in the first degree. On December 11th, 2002, a jury in Montgomery County found Petitioner guilty of said offense. Petitioner was sentence December 30, 2003 to a life sentence. Petitioner next filed an appeal in the Court of Criminal Appeals on or about February 6, 2003. The Court of Criminal Appeals affirmed the lower court.





### **BASES OF PETITIONERS CLAIMS**

1. The Court was without Jurisdiction to render the judgment or to impose the sentence. Specifically, the Petitioner argues that law enforcement lacked probable cause to make an arrest of Petitioner. As such, Petitioner states that the Court lacked personal jurisdiction over him.

Additionally, Petitioner claims the Court lacks jurisdiction because the indictment is void. Petitioner states that the indictment fails to allege the elements of Robbery in the first degree. In support of this allegation the Petitioner states that in order to have a proper indictment for Robbery in the first degree the indictment must state that the victim suffered serious physical injury.

2. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law. Petitioner argues that he was only subject to one prior for the purposes of the Habitual Offender Act, and that the Court erred in allowing the state to present two (2) priors. Petitioner also claims that his sentence exceeds the maximum allowed because he claims he was indicted for Robbery in the third degree.

3. Newly discovered material facts exist which requires that the conviction or sentence be vacated by the court. The Petitioner attached a copy of what he claims is a hand written affidavit from the Co-Defendant (Jamar Brown) in this case. Petitioner claims that these are new facts that exist that he was unaware of at the time of trial.

### **STATES RESPONSE**

1. With respect to Petitioner's claim of lack of jurisdiction due to his arrest without probable cause the court is very clear. The Alabama Court of Criminal Appeals stated in Sumlin v. State, 710 So .2d 941 (Ala.Crim.App. 1998) that "An illegal arrest claim does not raise the jurisdiction of the court and can be barred from Rule 32 review because it could have been but was not raised at trial or on appeal." Petitioner had a trial in December of 2002 and filed an appeal in February of 2003. Petitioner failed to raise this issue in his appeal and if raised at trial it was unsuccessful. Relying on Sumlin v. State, 1998 WL 32625

(Ala.Crim.App. 1998) Petitioners request for relief on this issue is due to be **DENIED.**

With respect to the Courts jurisdiction the Petitioner raises one other issue. Petitioner argues that the indictment fails to allege the elements of Robbery in the first degree. In support of this allegation the Petitioner states that in order to have a proper indictment for Robbery in the first degree the indictment must state that the victim suffered serious physical injury.

In Shoulders v. State, 703 So.2d 1015, 1018 (Ala. Crim. App. 1997) the Court explains that this is not a valid jurisdictional question by stating "A claim by the petitioner that he was charged with the wrong crime and that the court was, therefore, without jurisdiction to render a judgment or pronounce sentence was really a challenge to the sufficiency of the evidence and was barred."

Even if this claim was a valid jurisdictional question it is without merit. The law in Alabama does not require the defendant to cause serious physical injury to the victim in order to be guilty of Robbery in the first degree. Johnson v. State, 473 So. 2d 607 (Ala. Crim. App. 1985) state that a defendant commits Robbery in the first degree if "in the course of committing a theft he...uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance," and he "is armed with a deadly weapon or dangerous instrument" or "causes serious physical injury to another." It is not necessary for the defendant to cause serious physical injury to be found guilty of Robbery in the first degree. Petitioners request for relief on this issue is due to be **DENIED.**

2. Next the Petitioner argues that the sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law. Petitioner argues that he was only subject to one prior for the purposes of the Habitual Offender Act, and that the Court erred in allowing the state to present two (2) priors. Petitioner also claims that his sentence exceeds the maximum allowed because he claims he was indicted for Robbery in the third degree.

These claims amount to nothing more than bare allegations, unsupported by any facts or argument; thus, Petitioner has failed to meet his burden of

pleading under Rule 32.3 of the Alabama Rules of Criminal Procedure, and the specificity requirements of Rule 32.6 of the Alabama Rules of Criminal Procedure.

Petitioner did have two (2) prior felony convictions for the purposes of the Habitual Felony Act when he committed the Robbery in question. In October of 1994 Petitioner plead guilty to Robbery in the first degree and was sentenced to 15 years in the penitentiary. In August of 1999 Petitioner plead guilty to the charge of Possession of Marijuana in the first degree and was sentenced under the Habitual Felony Act to 10 years split to serve 3 years reverse split postponed 1 year. (see States exhibits 1 and 2) Clearly the Petitioner had two prior felonies on his record when he committed the Robbery in question in April of 2002.

Finally, as to the Petitioners sentence, he argues the indictment charges him with Robbery in the third degree and not Robbery in the first degree. There is no merit to this claim and the only argument made by Petitioner in support is that in order to be convicted of Robbery in the first degree it was required that the State prove serious physical injury to the victim. This argument has already been address in States response number one (1). The State has provided a copy of Petitioners indictment, which will show that he was indicted for Robbery in the first degree. (States Exhibit 3) Petitioners request for relief on these issues are due to be **DENIED**.

3. Petitioners final issue raised is that newly discovered material facts exist which requires that the conviction or sentence be vacated by the court. The Petitioner attached a copy of what he claims is a hand written affidavit from the Co-Defendant (Jamar Brown) in this case. Petitioner claims that these are new facts that exist that he was unaware of at the time of trial.

In order for the Petitioner to meet the definition of "newly discovered evidence" under subsection 32.1 (e), a petitioner must plead and establish five things:

1. That the facts relied on were not known by petitioner or his counsel at the time of trial, at the time of sentencing, in time to file a new trial motion, or in time to be included in a prior

collateral proceeding and they could not have been discovered by any of those times through the exercise of reasonable diligence;

2. The facts are not merely cumulative of facts known to the petitioner or his counsel;
3. The facts do not merely amount to impeachment evidence;
4. If the facts had been known at the time of trial or sentencing, the outcome of the proceeding would have been different; and
5. The facts establish that the petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he received.

Petitioner fails to meet the burden placed upon him by Rule 32.1 (e) to sustain his argument. At the time of trial the Petitioner and his attorney were aware of the Co-Defendant Jamar Brown and could have called him as a witness. Mr. Brown's Affidavit establishes that his story if he would have testified at trial would have been the same then as it is today. Hence, there is no new evidence. Mr. Brown in his affidavit tells us that he spoke with Petitioner's attorney, Wiley Hartley, before Petitioner's trial and told Mr. Hartley exactly what is now contained in Mr. Brown's affidavit. These facts were known at the time of Petitioner's trial and as such are not newly discovered facts. Petitioner's request for relief on this issue is due to be **DENIED**.

### CONCLUSION

For the above-stated reasons, the Petitioner is not entitled to relief on any of his claims, and his conviction and sentence are due to be upheld. There is sufficient evidence to support the Petitioner's convictions and sentence. Thus, Mr. Greenwood's petition is due to be denied. Therefore, the Respondent, the State of Alabama, moves this Honorable Court to dismiss, with prejudice, Greenwood's Petition for Post-Conviction Relief.

Respectfully submitted on this the 24<sup>th</sup> day of November 2003.

ELEANOR I. BROOKS  
DISTRICT ATTORNEY

\_\_\_\_\_  
Benjamin E. Schoettker (SCH 091)  
Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that the above and foregoing has been served upon Kourtney Greenwood by placing a true copy of the same in the United States Mail, first-class postage prepaid and properly addressed to him at AIS# 179810, Donaldson Correctional Facility, 100 Warrior Lane, Bessemer, Alabama 35023 on this the 24<sup>th</sup> day of November, 2003.

ELEANOR I. BROOKS  
DISTRICT ATTORNEY

By: \_\_\_\_\_  
Benjamin E. Schoettker (SCH 091)  
Deputy District Attorney

IN REFERENCE to my case NO# <sup>CC</sup> 02000905 My name is Jamar Brown, On this date and time 11-21-02 I plead out to a crime I had committed, but to my understanding there is a guy by the name of Kourtney Greenwood who I supposedly have as a codefendant but I don't even know of that ~~guy~~ and he is not the person that was even present with me at the time this incident took place. I'll just start like this during my stay in the Montgomery County Jail whenever I spoke with my lawyer Winston Durant about my cases he always seemed to speak of and ask about this guy ~~name~~ but the name of Kourtney Greenwood but I always told him I didn't even know a guy by that name so I stayed in the County Jail about 9 months so as time went on I went to court and plead guilty to the crimes I had committed, and I noticed at this time the D.A. who name was Perkins and another white ~~guy~~ who I think was a D.A. ~~who name was Perkins~~ along with my lawyer Winston Durant all continuously asked me about the dude Kourtney Greenwood so I told them I did not even know him which I really still do not so while sitting in the 11 cells in the back of the courtroom I was called out several times to talk to my lawyer and that D.A. lady name Ms. Perkins, so on one occasion I was called out to talk to that lady D.A. Perkins and a white guy, so she asked me about Kourtney Greenwood again so I said I keep telling yall I don't know that dude why yall keep

asking me the same thing, so the lady D.A. Perkins said he's not a witness for Courtney Greenwood is he speaking to the white guy I don't know his name, so the white guy said I don't think so, so I was like witness what, what you talking bout, so the lady D.A. Perkins said, we mean without you testifying in court for this guy we have a case on this guy, so the lady D.A. said Mr Jamar Brown you work with me I'll work with you then she said I'll see to you getting ~~20/3 sept return or probation~~, then she said you don't have to worry bout nothing I'm going to talk to the Judge, then she said you have a nice day Mr Jamar Brown I'll see you on the 12th of Dec til then just remember what I said then she left. So I ain't never been in nothing like this before but sept return or Probation sounded good, so it was like a day before I went to get sentenced, I was called down to court, so when I got down there it was this other white guy name Hartley or some, I think he was that guy Courtney Greenwood lawyer, then my lawyer that same D.A. Perkins lady and the other white guy who was with her before came to talk to me bout Testifying for that guy Courtney Greenwood, so to be honest I was really thinking bout the sept return or probation I was told I would get, so I just told them all the truth, that I don't even know a guy buy that name probably never seen him before and that he was not the guy that was present with me at



the time I committed these crimes, but then I also said I was not going in that courtroom to testify, and it see like that lady D.A. Perkins knew this was going to happen to me like this but I didn't say nothing," the reason for this letter to whomever it may concern is, I don't know if that guy Courtney Greenwood went to trial or whatever, but I heard through the Jail and from a couple of people I think know him that he got messed up for some he didn't know anything about", and I Jamar Brown is a witness to that I know for a fact that guy name Courtney Greenwood did not commit these crimes and do not know anything about them unless he was told or heard some about it, cause he I know was not the guy who was with me at the time all this trouble occurred I don't know how he ended up in this, but it had to be some mistakes made somewhere you know I sat back for months + months and I look back on how this all happened I think I could have stopped an innocent man out, and believe me I know he's innocent, and if there any way possible to whomever this letter may concern that I can do anything to help this guy out, I will do it, cause I am a changed man myself now and I can't continue to go on with this on my mind, and the good word has brought me to say this was all wrong from the start, and it has gotten an innocent man in a messed up situation, and I fought myself and that lady D.A. Perkins for this mistake, and I Jamar Brown am willing to testify or do whatever possible right now to not have that innocent

man punished for my trouble. To whom ever this may concern  
will you please respond soon.

X In reference To: Again I Jamar Brown do not even  
know Kourtney Greenwood, and he is not the guy who was  
with me at the time I committed these crimes, and he ~~was~~ as an  
innocent man is being punished for some he did not do  
<sup>on</sup> nor knows nothing about, which I fought myself and  
Off. Perkins for this mistake, and I am willing to  
Testify in Kourtney Greenwood behalf or do whatever  
to ~~make~~ things right here to <sup>whom</sup> ever it may concern.

Sincerely,

Jamar Brown Jamar Brown

Notary

State of Ala - Mt. Co.

Sworn to and subscribed before me this 18  
day March 03.

My commission Expires 1-17<sup>th</sup> day of 2006

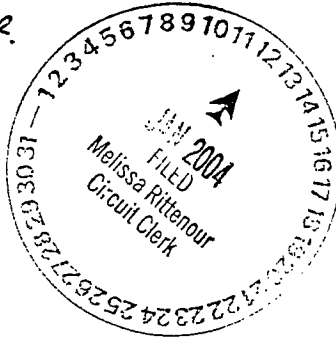
Deey, Glen - Notary Public

Sincerely Jamar Brown <sup>AIS#</sup> 227221

case# 2002-905

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

107

KOURTNEE GREENWOOD,  
PETITIONER.STATE OF ALABAMA,  
RESPONDENTS,AMEND TO RULE 32 PENDING  
↓

CASE NO\*CC-2002-909.60

TMH

## PETITIONER'S ESTABLISHMENT OF THE LEGALITY OF HIS NEWLY DISCOVERED EVIDENCE

THE PETITIONER, KOURTNEE GREENWOOD, ("GREENWOOD") MOVES THE COURT TO ACKNOWLEDGE HIS "NEWLY DISCOVERED EVIDENCE" PURSUANT RULE 32.3 ALA.R.C.R. PRO. AS ESTABLISHED FULFILLMENT OF RULE 32.1(E), (1) THROUGH (5) AS FOLLOW:

1. THE FACTS OF "NEWLY DISCOVERED EVIDENCE" FROM THE KEY WITNESS ACCOUNTS OF JAMAR BROWN, ("BROWN") GIVES WAY THAT "GREENWOOD" IS INNOCENT OF "ROBBERY 1<sup>ST</sup> DEGREE" AS ALLEGED WITHIN THE INDICTMENT, DUE TO BROWN READY AVAILABLE, AS HE IS NOW WILLING TO TESTIFY ALONG WITH DEVEN GREENWOOD, MABLE GREENWOOD, LAVANE HOWARD, KIMBERLY GREENWOOD AND A HOST OF OTHER RELATIVES AND FRIENDS WHO WOULD HAVE TESTIFIED DURING MY TRIAL, BUT WERE TOLD IF THEY ALL WERE GOING TO TESTIFY TO THE SAME THING "MY DESCRIPTION"

(1)

THAT HE ONLY WOULD CALL AND NEEDED JUST A FEW OF THEM TO DO SO," THIS INFORMATION CONFIRMS GREENWOOD IS NOT THE SUSPECT POLICE WAS LOOKING FOR OR WHO THEY NEEDED FOR THIS CRIME, "GREENWOOD" IS INNOCENT OF THIS CRIME AND SHOULD NOT HAVE RECEIVED THE SENTENCE HE "GREENWOOD" RECEIVED / SEE J. BROWN "AFFIDAVIT" FILE WITHIN RULE 32. PET ON SEPTEMBER 18, 2003; THIS PARAGRAPH FULFILL RULE 32.1(E)(5);

2. THE FACTS THAT "BROWN" HAS TO OFFER "GREENWOOD" WERE NOT AVAILABLE FOR THE TRIAL JURY TO CONSIDER AND WAS NOT KNOWN BY "GREENWOOD" OR HIS COUNSEL AT THE TIME OF TRIAL OR SENTENCING OR AVAILABLE FOR POST TRIAL MOTIONS OR FOR ANY PREVIOUS COLLATERAL PROCEEDINGS, DUE TO "GREENWOOD" DILIGENT SEARCH AND RESEARCH MADE AWARE TO "GREENWOOD" BY THE COURT, RELATIVES AND FRIENDS HERE AND THERE, MADE IT POSSIBLE FOR "GREENWOOD" TO RECEIVE A AFFIDAVIT / LETTER HANDWRITTEN FROM "JAMAR BROWN" THE KEY WITNESS AND SUSPECT IN THIS CRIME, AND ALSO AFTER RECEIVING "BROWN" AFFIDAVIT, I INFORMED MY APPELLATE COUNSEL BY THE NAME OF MACEO KIRKLAND WHO WAS HANDLING MY APPEAL BACK IN

JUNE 2003, AND HE WENT TO MEET WITH "BROWN" AT THE INSTITUTION WHERE HE "BROWN" IS BEING HELD AND CONFIRMED THE FACTS "BROWN" STATED IN HIS LETTER TO ME "GREENWOOD" AND I WAS TOLD BY MR KIRKLAND THAT NONE OF THOSE FACTS WERE LISTED IN/ON MY RECORD OF APPEAL AND I WOULD HAVE TO USE THIS INFORMATION ON A RULE 32. PET; SEE "AFFIDAVIT FROM BROWN" FILE WITHIN RULE 32 ON SEPTEMBER 18, 2003 EXHIBIT D + E

THIS PARAGRAPH FULFILL RULE 32.1(E), (1);

3. THE FACTS THAT "BROWN" HAVE TO OFFER ARE NOT MERELY CUMULATIVE TO OTHER FACTS THAT WERE KNOWN, FOR THE PROSECUTION ALLEGED "GREENWOOD" HELD A 13yr old boy IN COMMISSION OF WHY JAMAR BROWN ROBBED A LARRY COPELAND AT GUNPOINT / AND JAMAR BROWN A KEY WITNESS AND SUSPECT THE ALLEGED CRIME ACCOUNTS PRESENTS HE "BROWN" WAS CALLED AS A WITNESS FOR ME DURING MY TRIAL TO TESTIFY ON MY BEHALF BUT HE HAD PREVIOUSLY BEEN PERSUADED, PROMISED A SENTENCE OF 20/3 OR PROBATION



FROM DISTRICT ATTORNEY VERNETTA PERKINS  
FOR HIS COOPERATION TO NOT TESTIFY; WHICH  
SHE KNEW "MS PERKINS" KNEW IT WOULD RENDER  
MY DEFENSE AT BEST AND NOW "BROWN" IS  
WILLING TO TESTIFY TRUTHFULLY IN MY  
"GREENWOOD" BEHALF OF THIS MATTER;

THIS PARAGRAPH FULFILL RULE 32.1(E), (2), FOR  
"BROWN" WAS PERSUADE NOT TO TESTIFY ON MY  
BEHALF WHICH RENDERED MY DEFENSE AND  
CAUSED ME "GREENWOOD" AN INNOCENT MAN A  
FELONY CONVICTION "A WRONGFUL FELONY CONVICTION".

4. THE FACTS THAT "BROWN" HAVE TO OFFER  
DO NOT MERELY AMOUNT TO IMPEACHMENT  
EVIDENCE, FOR "BROWN" TESTIMONY WOULD  
SWAY JURORS TO CONCLUDE THAT "GREENWOOD"  
WAS NOT THE GUY WHO ACCOMPANIED "BROWN"  
WHILE COMMITTING A CRIME OF ROBBERY!

THIS PARAGRAPH FULFILLS RULE 32.1(E), (3);

5. IF THE FACTS THAT "BROWN" HAVE TO  
OFFER WOULD HAVE BEEN KNOWN AT THE TIME  
OF TRIAL OR AT SENTENCING, BROUGHT BEFORE

JURORS ATTENTION/PRESENCE: (THE FACTS OF PERSUASION, OF PROMISING "BROWN" A SENTENCE OF 20/3 OR PROBATION FOR HIS COOPERATION WHICH HELD HIM FROM TESTIFYING IN THIS CRIMINAL CASE) "GREENWOOD" WOULD HAVE BEEN FOUND NOT GUILTY OF THE CRIME "BOGUS CRIME" OF ROBBERY IN THE FIRST DEGREE, AS SO DO HANG JURY'S HAPPEN QUITE OFTEN AND "GREENWOOD" WOULD NOT HAVE SUFFERED THIS FELONY CONVICTION "WRONGFUL FELONY CONVICTION" WHICH PROMPTED ME "GREENWOOD" TO RECEIVE LIFE IN PRISON FOR A CRIME I "GREENWOOD" IS INNOCENT OF! THIS PARAGRAPH FULFILLS RULE 32.1(E), (4);

6. "GREENWOOD" IS NOT PRECLUDED BY RULE 32.2(b) OR (c) WITH THIS CLAIM, FOR I "GREENWOOD" FILED THE 'NEWLY DISCOVERED EVIDENCE' INVOLVING "BROWN" CIRCUMSTANCES OF FACT WITHIN SIX (6) MONTHS AFTER BEEN DISCOVERED AND IT WOULD BE A DEFINATELY MISCARRIAGE OF JUSTICE WITH FAILING TO ENTERTAIN THIS PETITION



WITH RELIEF!

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Wherefore, PREMISES CONSIDERED, "GREENWOOD"  
 PRAY THIS HONORABLE COURT ACKNOWLEDGE  
 THE MERITORIOUS 'NEWLY DISCOVERED EVIDENCE'  
 AND GRANT RELIEF THE COURT DEEM NECESSARY.

Kourtnee Greenwood

KOURTNEE GREENWOOD #179810

Certificate of Service

I HEREBY CERTIFY ON THE 7<sup>th</sup> day of  
DECEMBER 2004, I SERVED A COPY OF THE FOREGOING  
 "PETITIONER'S EST. OF LEGALITY OF NEWLY DISCOVERED  
 EVIDENCE" ON THE BELOW BY U.S. MAIL PROPERLY  
 ADDRESSED WITH PREPAID POSTAGE AND AS FOLLOWS:

"MELISSA RITTENOUR"  
 MONTGOMERY COUNTY CIRCUIT  
 COURT CLERK,  
 251 S. LAWRENCE ST  
 MONTG, AL 36104

FORWARD COPY TO → MONTGOMERY COUNTY D. A.  
 OFFICE AT SOME ADDRESS:

Kourtnee Greenwood

KOURTNEE GREENWOOD #179810

W.E.D.C.F.  
 100 WARRIOR LANE

B-68

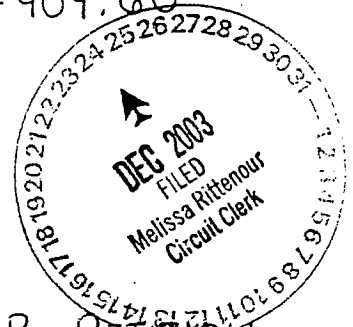
BESSEMER, AL 35023

(6)

IN THE CIRCUIT COURT OF MONTGOMERY  
COUNTY - ALABAMA

KOURTNEE GREENWOOD,  
PETITIONER,  
VS.  
STATE OF ALABAMA,  
RESPONDENT.

CASE # CC-02-909.60



AMENDMENT TO RULE 32, A.R.Cr.P. PETITION

COMES YOUR PETITIONER, KOURTNEY GREENWOOD, IN  
THE ABOVE STYLED CAUSE AND MOVES THIS COURT TO  
ALLOW HIM TO AMEND HIS PREVIOUSLY FILED RULE 32,  
A.R.Cr.P. PETITION PURSUANT TO RULE 32.7 (b).

GREENWOOD SUBMITS THE ADDITIONAL FOLLOWING  
CLAIM:

I. THE CONSTITUTION OF THE UNITED STATES OR OF  
THE STATE OF ALABAMA REQUIRES A NEW TRIAL,  
A NEW SENTENCE PROCEEDING, OR OTHER RELIEF  
BECAUSE:

DENIAL OF ASSISTANCE OF COUNSEL AS GUARAN-  
TEED BY THE 6<sup>TH</sup> AMENDMENT OF THE UNITED  
STATES' CONSTITUTION:

(1.) DEFENSE COUNSEL FAILED TO SUBPOENA A MATERIAL WITNESS AND THUS VIOLATED PETITIONER'S 6<sup>TH</sup> AMENDMENT RIGHT TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM AND TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR.

THE STANDARD FOR CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL WAS SET OUT IN STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); A CLAIMANT MUST SHOW 1.) DEFICIENT PERFORMANCE OF COUNSEL, AND 2.) ABSENT SAID ERRORS THERE MUST BE A REASONABLE PROBABILITY OF DIFFERENT RESULTS.

ONLY ONE WITNESS IDENTIFIED GREENWOOD AS THE ROBBERY SUSPECT, THAT WAS LARRY COPELAND. HOWEVER, COPELAND'S TESTIMONY SHOWED THERE WAS ANOTHER PERSON, ANOTHER VICTIM TO THE ALLEGED OFFENSE. COPELAND TESTIFIED THAT HE WAS WITH A 13 YEAR OLD BOY NAMED SERILLO, AND IN FACT SERILLO WAS HELD BY GREENWOOD DURING THE ROBBERY. (R 67, L 18-24).

WHEN ASKED HOW LONG HE HAD KNOWN SERILLO, COPELAND SAID "8 OR 9 YEARS." HOWEVER, COPELAND ALSO SAID HE DID NOT KNOW SERILLO'S LAST NAME. (R 68, L 1-12); EVEN THOUGH SERILLO LIVES RIGHT DOWN THE STREET AND IS THE SON OF A FEMALE

FRIEND OF COPELAND. (R71, L16-23).

THE DETECTIVE WHO RESPONDED TO COPELAND'S PHONE CALL AFTER THE ALLEGED ROBBERY STATED COPELAND DID NOT GIVE HIM SERRILLO'S NAME (R87, L17-19), EVEN THOUGH ADMITTING, AS A SECOND VICTIM TO THE ROBBERY, SERILLO WOULD BE A VERY IMPORTANT MATERIAL WITNESS. (R87, L20-R88, L1).

THE FACT THAT SERILLO WAS NOT SUBPOENAED BY THE STATE RAISED A RED FLAG WITH DEFENSE COUNSEL. COUNSEL QUESTIONED THE DETECTIVE WHO SAID, OTHER THAN COPELAND'S TESTIMONY, THERE WAS NO EVIDENCE TO IMPLEMENT GREENWOOD IN THE CRIME. (R90, L9-12).

DEFENSE COUNSEL WAS AWARE OF THE EXISTENCE OF A SECOND VICTIM, TWO MONTHS PRIOR TO TRIAL, AT GREENWOODS FIRST TRIAL, WHEN COPELAND TESTIFIED. (R55, L5-16 / R61, L8-13). COUNSEL SHOULD HAVE EXERCISED DILIGENCE AND SUBPOENAED SERILLO FOR TRIAL. SERILLO WAS THE ONLY OTHER EYE-WITNESS TO THE TRIAL, AND IN FACT GOT A BETTER LOOK AT THE SUSPECT THAN DID COPELAND.

COUNSEL SHOULD HAVE REALIZED AND ACTED UPON HIS INSTINCTS. COPELAND TESTIFIED HE HAD KNOWN SERILLO 8 OR 9 YEARS, KNEW SERILLO'S

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MOTHER, BUT DIDN'T KNOW HIS LAST NAME. COPELAND ALSO WITHHELD SERILLO'S IDENTITY FROM THE POLICE.

DEFENSE PRESENTED PLENTY OF EVIDENCE TO SHOW GREENWOOD WAS NOT THE ROBBER. COPELAND TESTIFIED THE OFFENDER HAD "TWISTS" IN HIS HAIR ON THE DATE OF OFFENSE, APRIL 9<sup>TH</sup>, (R 50, L 2-20). DEFENSE PRESENTED THREE WITNESSES TO SHOW THAT GREENWOOD NEVER WORE HIS HAIR IN "TWISTS", AND IN FACT, DID NOT HAVE HIS HAIR IN "TWISTS" ON APRIL 9<sup>TH</sup>:

1.) KIM GREENWOOD (R 101, L 4-12 - R 102); 2.) DEVEN GREENWOOD (R 111, L 9-13, L 16-25); 3.) LAVAN HOWARD (R 121, L 18-21).

DEFENSE ALSO PRESENTED EVIDENCE TO SHOW THAT AT THE TIME OF OFFENSE, GREENWOOD WAS BABYSITTING HIS CHILDREN. (R 126, L 24-25; R 127, L 1-8; R 135, L 24 - R 136, L 2).

GREENWOOD HIMSELF TESTIFIED HE DID NOT KNOW CODEFENDANT, JAMAR BROWN OR THE VICTIM, COPELAND. (R 140, L 15-22).

SERILLO IS THE ONLY PERSON THAT COULD HAVE POSITIVELY TESTIFIED AS TO WHETHER OR NOT GREENWOOD WAS IN FACT, THE ONE WHO

HELD HIM ON THE NIGHT IN QUESTION. THERE IS NOT A REASONABLE DEFENSE STRATEGY FOR COUNSELOR'S FAILURE TO PROCURE SERILLO'S TESTIMONY.

IN FACT, DURING CLOSING ARGUMENT, DEFENSE COUNSEL POSED THE THEORY THAT MAYBE COPELAND AND SERILLO WAS INTO ILLEGAL ACTIVITY THAT NIGHT, AND, THAT WAS WHY COPELAND WORKED SO HARD AT KEEPING SERILLO'S IDENTITY A SECRET, GOING EVEN SO FAR AS TO SAY "THAT'S [SERILLO] ONE OF THE WITNESSES WE NEED HERE..." (R168-R169 / R169, L8-9).

FURTHER, DEFENSE COUNSEL MENTIONED SERILLO'S ABSENCE IN HIS MOTION TO DISMISS, BUT STILL TOOK NO STEPS TO HAVE SERILLO SUBPOENAED. (R98, L8-15).

DEFENSE COUNSEL FURTHER FAILED TO SUBPOENA OR PRODUCE THE THREE CHILDREN GREENWOOD WAS BABYSITTING AT THE TIME THE ALLEGED ROBBERY WAS COMMITTED. (R126, L8-9 / R144, L13-25). THEIR TESTIMONY COULD HAVE ADDED CORROBORATION TO HIS ASSERTION THAT HE DID NOT LEAVE THEM, AND, HENCE COULD NOT HAVE BEEN THE OFFENDER.

" IN REVIEWING THE PERFORMANCE OF COUNSEL IN CONDUCTING A DEFENSE, THE COURT WILL

LOOK FOR SPECIFIC EXAMPLES OF COUNSEL'S CONDUCT WHICH RENDERED HIS DEFENSE OF ACCUSED LESS THAN REASONABLY EFFECTIVE UNDER THE TOTALITY OF THE CIRCUMSTANCES." U.S. V. CHILDS, 571 F.2d 315 C.A.5 (AIG.) 1978.

IN THIS CASE, SERRILLO'S TESTIMONY WAS VERY IMPORTANT. HE WAS THE ONLY OTHER PERSON, BESIDES COPELAND, WHO COULD SAY FOR SURE WHAT HAPPENED ON THE NIGHT OF APRIL 9<sup>TH</sup>. ALSO, THE CHILDREN'S TESTIMONY, UNDER THE CIRCUMSTANCES, COULD HAVE PROVED GREENWOOD COULD NOT BE THE OFFENDER, AS HE WAS AT HOME WATCHING THEM.

THE TWO-PRONG TEST OF STRICKLAND HAS BEEN MET'.

1.) DEFICIENT PERFORMANCE OF COUNSEL: FAILURE TO SUBPOENA OR PROCURE THE TESTIMONY OF SERRILLO OR THE CHILDREN;

2.) ABSENT SAID ERROR, HAD SERRILLO OR THE CHILDREN TESTIFIED THAT GREENWOOD WAS NOT THE OFFENDER IN QUESTION, AND WITH COPELAND THE ONLY WITNESS TO POSITIVELY IDENTIFY GREENWOOD, THERE IS A REASONABLE PROBABILITY THIS WOULD HAVE RAISED ENOUGH "REASONABLE DOUBT" IN THE MINDS



OF THE JURY FOR ACQUITTAL.

IN CRISP V. DUCKWORTH, 743 F.2d 580, 584 (7<sup>TH</sup> Cir. 1984), TRIAL COUNSEL WAS HELD TO BE INEFFECTIVE FOR FAILING TO PROCURE A WITNESS. IN REVERSING AND REMANDING THE COURT STATED, "TRIAL COUNSEL CANNOT STAND BEHIND THE SHIELD OF TRIAL STRATEGY FOR FAILURE TO INTERVIEW READILY AVAILABLE WITNESS WHOSE TESTIMONY WOULD HAVE BEEN NONCUMULATIVE AND POTENTIALLY AIDED THE DEFENSE."

IN THIS CASE, COPELAND TESTIFIED THAT SERILLO LIVED DOWN THE STREET FROM HIMSELF, THAT HE HAD KNOWN HIM 8 OR 9 YEARS, AND THAT HE WAS FRIENDS WITH THE MOTHER. LIKEWISE, THE CHILDREN GREENWOOD WAS BABYSITTING WERE ALSO EASY TO FIND AND READILY AVAILABLE. GREENWOOD, AN INNOCENT MAN, STANDS SERVING A LIFE SENTENCE BECAUSE OF THE LACK OF EFFECTIVE REPRESENTATION OF COUNSEL. THIS COURT MUST ACCORDINGLY REVERSE THE CONVICTION AND ORDER A NEW TRIAL, TO CORRECT THIS BLATANT MISCARRIAGE OF JUSTICE.

2.) DEFENSE COUNSEL FAILED TO OBJECT TO COURT'S IMPROPER JURY INSTRUCTIONS:

THE COURT INSTRUCTED THE JURY THAT THEY MUST ALL REACH THE SAME VERDICT, THAT THERE COULD BE NO SPLIT OR HUNG JURY.

" ALSO , BEFORE YOU REACH A VERDICT , ALL TWELVE OF YOU MUST REACH OR AGREE ON THE SAME VERDICT . IN OTHER WORDS , THERE CAN BE NO SPLIT VERDICT . " (R 200 , L 23-25). "IT MUST BE UNANIMOUS . " (R 201 , L 1).

THIS WAS CLEARLY IMPROPER INSTRUCTION. IT LEAD THE JURY TO BELIEVE THAT IF ONE , OR SEVERAL , OF THEM WERE NOT CONVINCED BEYOND A REASONABLE DOUBT , THEY COULD NOT HOLD FAST TO THIER OWN DECISION BUT MUST GO WITH THE MAJORITY VIEW. THE COURT INSTRUCTED THEM THERE COULD BE NO SPLIT DECISION , WHEN IN FACT "HUNG JURIES " HAPPEN QUITE FREQUENTLY.

THE 14<sup>TH</sup> AMENDMENT OF THE U.S. CONSTITUTION AFFORDS A DEFENDANT LIKE GREENWOOD A RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW. THAT INCLUDES THE RIGHT OF EACH INDIVIDUAL JUROR TO DECIDE INDIVIDUALLY , IF A PERSON IS GUILTY OR INNOCENT , WITHOUT PRESSURE FROM THE COURT THAT THE VERDICT MUST BE UNANIMOUS , AND THAT THEY COULD NOT RETURN AS A HUNG JURY.

IN DANIEL V. THIGPEN, 742 F.Supp. 1535 (mid. Ala.) 1990, TRIAL COUNSEL WAS HELD INEFFECTIVE AND A NEW TRIAL WAS REQUIRED FOR FAILURE TO OBJECT TO THE JURY CHARGE.

HAD GREENWOOD'S COUNSEL OBJECTED, THE COURT COULD HAVE CORRECTED THE ORAL CHARGE AND TOLD THE JURORS TO DECIDE, INDIVIDUALLY AND COLLECTIVELY, THE GUILT OR INNOCENCE OF GREENWOOD. THUS, THERE IS A REASONABLE PROBABILITY, ABSENT THE IMPROPER CHARGE, GREENWOOD WOULD HAVE BEEN ACQUITTED OR THE JURY HUNG, THUS A GUARANTEE OF DIFFERENT RESULTS.

### CONCLUSION

FOR THE AFOREMENTIONED REASONS, GREENWOOD PRAYS THIS COURT TO ORDER AN EVIDENTIARY HEARING TO DECIDE DISPUTED MATERIAL MATTERS, OR, OTHERWISE GRANT HIM ANY AND ALL RELIEF HE IS ENTITLED TO.

DONE THIS 21<sup>ST</sup> DAY OF DECEMBER 2003.

RESPECTFULLY SUBMITTED,

Kourtnee Greenwood

KOURTNEE GREENWOOD, pro se

IN THE CIRCUIT COURT OF Montgomery  
COUNTY ALA.

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KOURTNEE GREENWOOD

PETITIONER,

CASE NO<sup>#</sup> CC-02-909.66

VS.

STATE OF ALABAMA

RESPONDENTS,

DECLARATION OF Mailing

I CERTIFY THAT ON THIS THE 21<sup>ST</sup> DAY OF  
DECEMBER, 2003, I HAVE PLACED IN THE  
INSTITUTIONAL MAIL BOX, PETITIONER'S AMENDED  
ARGUMENT OF ISSUES WITH CERTIFIED FIRST  
CLASS POSTAGE PREPAID AND PROPERLY ADD-  
RESSED TO "PURSUANT TO" HOUSTON VS. LACK  
487 U.S. 266, 101 L. Ed 2d 24 108 S. Ct 237  
(1988); EX PARTE POWELL, 674 So 2d 1258  
(ALA. 1995)

DATED 12/21 . 2003

Respectfully  
Submitted,

WITNESSES:

Robert G. Greene 109926

Barbara H. Lewis 196307

Curtis L. Thomas 168891

Kourtnee Greenwood  
KOURTNEE GREENWOOD

IN THE CIRCUIT COURT OF MONTEGOMERY  
COUNTY, ALABAMA

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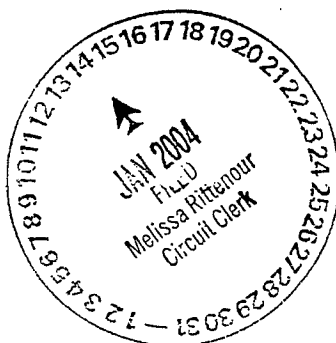
KOURTNEE GREENWOOD,  
PETITIONER,

VS.

STATE OF ALABAMA,  
RESPONDENTS,

CASE NO #CC-02-909.60

TMH

MOTION FOR/TO DENY STATES  
MOVE FOR SUMMARY DISPOSITION  
AND REQUEST FOR EVIDENTIARY  
HEARING

COMES YOUR PETITIONER IN THE ABOVE STYLE  
CAUSE AND IN ADDITION TO PETITIONERS  
"TRAVERSE" FILED WITH THIS COURT ON  
DECEMBER 11, 2003, AND HEREBY MOVES  
THIS COURT TO DENY THE STATES MOTION  
FOR SUMMARY JUDGEMENT OF NOVEMBER 25,  
2003. FURTHER, "GREENWOOD" HEREBY  
REQUESTS AN EVIDENTIARY HEARING  
PURSUANT TO RULE 32.9, A. R. C. P. IN  
SUPPORT THEREOF GREENWOOD SHOWS

(1)

THE FOLLOWING.

1. "IN A RULE 32 PROCEEDING, THE PETITIONER HAS THE BURDEN OF PLEADING AND PROVING BY A PREPONDERANCE OF THE EVIDENCE THE FACTS NECESSARY TO ENTITLE THE PETITIONER TO RELIEF! SEE RULE 32.3, A.R.C.R.P.; ALSO, FORTENBERRY V. STATE, 659 So 2d 194 (AL. CR. APP. 1994).
2. "GREENWOOD" SEEKS AN EVIDENTIARY HEARING TO CONCLUDE HIS CLAIMS OF NEWLY DISCOVERED EVIDENCE AND ETC WITH WITNESSES AND EVIDENCE THAT EXONERATE "GREENWOOD" FROM THE CRIME CHARGED AND PROVES HIS INNOCENCE OF THE CRIME CHARGED THAT WAS WITHHELD FROM "GREENWOOD" AND GREENWOOD COUNSEL FOR USE AT TRIAL BY JURY, IN WHICH WOULD HAVE THWART THE CONVICTION AN/OR SENTENCE AGAINST HIM / SEE AFFIDAVIT FROM J. BROWN IN RULE 32 FILED WITH THE COURT SEPTEMBER 18, 2003;
3. THE STATE, IN THEIR MOTION OF NOVEMBER 25, 2003, HAS MISAPPLIED AND MISAPPREHENDED THE RULE GOVERNING



NEWLY DISCOVERED EVIDENCE RULE 32.1  
(E), A. R. C. R. P.

4. THE STATE ARGUES THE SUBSTANCE OF THE AFFIDAVIT OF JAMAR BROWN (ATTACHED TO RULE 32 PETITION) WERE FACTS ALREADY KNOWN DURING TRIAL AND THENCE ARE NOT "NEWLY DISCOVERED".

5. THE BRIEF SUMMARY OF SAID AFFIDAVIT IS TO THE EFFECT, JAMAR BROWN, THE SUPPOSEDLY CO-DEFENDANT IN THE INSTANT CASE, "BROWN" STATED HE DID NOT TESTIFY DURING "GREENWOOD" TRIAL BECAUSE HE WAS PROMISED A SENTENCE OF 20/3 OR PROBATION FOR HIS COOPERATION/PERSUASION BY STATE DISTRICT ATTORNEY VERNETTA PERKINS; THESE FACTS WERE NOT KNOWN AT TRIAL.

6. "JAMAR BROWN" HAD ADMITTED TO AND PLEAD GUILTY TO THE INSTANT OFFENSE PRIOR TO "GREENWOOD" TRIAL.

7. WHILE THE FACT THAT "JAMAR BROWN" TOLD DEFENSE COUNSEL THAT HE DID NOT KNOW "GREENWOOD" AND THAT "GREENWOOD" WAS

NOT WITH HIM WHILE HE "BROWN" WAS COMMITTING THE ROBBERY WERE KNOWN BY DEFENSE COUNSEL AT THE TIME OF TRIAL (R 206, L 1-21); THE RECORD ALSO AFFIRMATIVELY REFLECTS THAT JAMAR BROWN REFUSED TO TESTIFY IN FRONT OF A JURY OF SAID FACTS, FOR A REASON KNOW ONE KNEW AT THE TIME, BUT SINCE THE DISCOVERY OF "BROWN" AFFIDAVIT, WE NOW KNOW IT WAS BECAUSE HE "BROWN" WAS PROMISED A SENTENCE OF 20/3 OR PROBATION FOR HIS COOPERATION IN THIS CASE/ PERSUADED BROWN NOT TO TESTIFY TO THE TRUTH IN ORDER TO GET A SENTENCE, WHICH D.A. PERKINS KNEW THIS WRONGFUL ACT WOULD RENDER DEFENSE ABILITY AT BEST; IF "J. BROWN" WOULD HAVE TESTIFIED AT THAT TIME, WE NOW KNOW THAT HE WOULD NOT HAVE RECEIVED THE SENTENCE HE "BROWN" WAS PROMISED, OR AT LEAST HE "BROWN" BELIEVED HE WOULD NOT HAVE; SEE BROWN AFFIDAVIT IN RULE 32 FILED SEPTEMBER 18, 2003;

8. A WITNESS, ALTHOUGH CAN BE FORCED TO

TESTIFY, CANNOT BE FORCED TO TESTIFY AGAINST HIMSELF WHEN IN FEAR OF PUTTING HIMSELF IN JEOPARDY, SUCH AS HERE WHEN JAMAR BROWN HAD YET TO BE SENTENCED FOR THE INSTANT OFFENSE, SINCE "J. BROWN" AFFIDAVIT, WE NOW KNOW HE "BROWN" WAS IN FEAR TO TESTIFY BECAUSE D.A. PERKINS HAD PERSUADED HIM NOT TO. THE RIGHT NOT TO TESTIFY AGAINST ONE'S SELF IS PROTECTED BY THE 5TH AMENDMENT OF THE U.S. CONSTITUTION. 127

9. ONLY AFTER "BROWN" WAS SENTENCED DID HE COME FORWARD WITH THE AFFIDAVIT OF THE TRUTH, THAT KOURTNEE GREENWOOD WAS INNOCENT AND IS INNOCENT OF THE INSTANT OFFENSE, AND WILL NOW TESTIFY TO THIS AND OTHER OVERWHELMING FACTS THAT CAUSED THIS EVENT TO OCCUR THIS WAY THAT IS IN THE AFFIDAVIT OF "J. BROWN" AND THAT WAS NOT KNOWN AT JULY TRIAL.

10. FURTHER, THE AFFIDAVIT WAS NOT DISCOVERED BY GREENWOOD IN TIME FOR A POST TRIAL

MOTION OR ANY PREVIOUS COLLATERAL 128  
PROCEEDING AND COULD NOT HAVE BEEN  
DISCOVERED THROUGH THE EXERCISE OF DUE  
DILIGENCE. "JAMAR BROWN" CAME FOR-  
WARD WITH THE TRUTH IN HIS OWN TIME  
AND COULD NOT HAVE BEEN FORCED.

11. THE FACTS DO NOT AMOUNT TO IMPRACHMENT  
EVIDENCE; HAD THE FACTS BEEN PRESENTED  
BEFORE TRIAL JURY, ETC, THE RESULT  
WOULD HAVE BEEN DIFFERENT.

12. THE NEWLY DISCOVERED TESTIMONY,  
SWORN TO BY AFFIDAVIT, SHOWS "KOURINEE  
GREENWOOD" IS INNOCENT OF THE CRIME  
HE STANDS CONVICTED OF, AND COMPLETE-  
LY EXONERATE "GREENWOOD" FROM THE  
CRIME.

13. THE SITUATION CALLS FOR AN EVIDE-  
NTIARY HEARING TO DETERMINE THE  
DISPUTED ISSUES OF MATERIAL FACT  
BETWEEN "GREENWOOD" AND THE STATE,  
WHERE "GREENWOOD" WILL HAVE THE RIGHT  
TO SUBPOENA JAMAR BROWN TO PUT

HIS TESTIMONY ONTO THE RECORD  
AND IN FRONT OF THIS HONORABLE  
COURT.

Wherefore Premises Considered, "GREENWOOD"  
PRAY THIS HONORABLE COURT WILL DENY  
THE STATE'S MOTION FOR SUMMARY  
DISPOSITION; SET THIS MATTER DOWN  
FOR AN EVIDENTIARY HEARING; ISSUE  
AN ORDER TO TRANSPORT "GREENWOOD"  
FROM THE DEPARTMENT OF CORRECTIONS  
TO THIS COURT FOR SAID HEARING;  
AND APPOINT COUNSEL TO ASSIST.

JANUARY 10<sup>TH</sup>, 2004  
DATE

Kourtnee Greenwood  
KOURTNEE GREENWOOD

### Certificate of Service

I HEREBY CERTIFY ON 10 day of JANUARY  
2004, I SERVED A COPY OF MOTION FOR/TO  
DENY STATE'S MOVE FOR SUMMARY DISPOSITION  
AND REQUEST FOR EVIDENTIARY HEARING IN  
THE INSTITUTIONAL MAIL BOX BY U.S. MAIL

with Prepaid Postage Properly Addressed  
as follows:

MELISSA RITTENOUR  
CIRCUIT CLERK OF  
MONTGOMERY COUNTY COURT-  
HOUSE,  
251 S. LAWRENCE ST  
MONTGOMERY, AL 36104

PLEASE  
SEND  
COPY  
TO

MONTGOMERY COUNTY  
DISTRICT  
ATTORNEY  
OFFICE,  
SAME  
ADDRESS.

Kourtnee Greenwood  
KOURTNEE GREENWOOD  
AL# 179810 B-68  
100 WARRIOR LANE  
BESSEMER, AL 35023



Form C-12

Rev. 3.98

131 CC-02-90-60

IN THE CIRCUIT COURT OF MONTGOMERY, AL  
(Circuit, District or Municipal) (Name of County or Municipality)Civil: \_\_\_\_\_ v. \_\_\_\_\_  
Plaintiff Defendant

Juvenile: In the matter of \_\_\_\_\_

Criminal: ☒ State of Alabama☐ Municipality of \_\_\_\_\_v. KOURTNEE GREENWOOD

Defendant

Court Date "PENDING" PRIOR TO ONE Court Time \_\_\_\_\_ AM/PM Date Requested \_\_\_\_\_

## TO BE COMPLETED BY REQUESTER

The Clerk is requested to issue an Order to Appear (Subpoena) for each of the following witnesses for:

☐ Plaintiff/State ☒ Defendant ☐ Grand Jury ☐ Other

Date Issued

Date Executed

1. Name JAMAR BROWN ALST 227221  
Home Address \_\_\_\_\_ALA D.O.C. Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

Alternate Address \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

1/10/04Remarks: BURDEN OF PROOF, THIS GUY IS INCARCERATED IN ALA. D.O.C SOMEWHERE, PLEASE LOCATE AND ISSU A SUBPOENA WARRANT ON HIM2. Name DEVEN GREENWOOD  
Home Address 2437 EAST 6TH SIXTH STREET,  
MONTGOMERY, AL Zip 36106Telephone Number 334-262-2499Alternate Address 911 S. UNION STREET,  
MONTGOMERY, AL Zip 36104Telephone Number 334-262-24991/10/04Remarks: TO HELP SET OUT MY BURDEN OF PROOF.3. Name DEMETRIUS DAVIS  
Home Address 2437 EAST 6TH SIXTH STREET,  
MONTGOMERY, AL Zip 36106Telephone Number 334-262-2499Alternate Address 912 S. UNION STREET,  
MONTGOMERY, AL Zip 36104Telephone Number 334-262-24991/10/04Remarks: TO HELP SET OUT MY BURDEN OF PROOF.4. Name Edward Scott  
Home Address 720 GENETRA CT  
MONTGOMERY, AL Zip 36104Telephone Number 334-834-5959

Alternate Address \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number 334-834-59591/10/04Remarks: TO HELP SET OUT MY BURDEN OF PROOF5. Name LAVANE HOWARD  
Home Address 3923 WOODLEY ROAD APT-102  
MONTGOMERY, AL Zip 36116Telephone Number 334-240-8043

Alternate Address \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

1/10/04Remarks: TO HELP SET OUT MY BURDEN OF PROOF

## METHOD OF SERVICE REQUESTED:

☐ Personal ☒ OtherCRIMINAL PROCEDURE1/10/04

Party Requesting Subpoena

KOURTNEE GREENWOODKourtnee Greenwood

Signature

ALA D.O.C

Requester Phone Number



6. NAME Kimberly GREENWOOD.  
HOME ADDRESS 2437 EAST 6<sup>th</sup> SIXTH STREET  
MONTGOMERY, AL ZIP 36106.  
TELEPHONE NUMBER <sup>334-</sup>262-2499.

DATE ISSUED,  
1/10/04

REMARKS: TO HELP SET OUT  
MY BURDEN OF PROOF.

7. NAME MABLE GREENWOOD.  
HOME ADDRESS 2437 EAST 6<sup>th</sup> SIXTH STREET,  
MONTGOMERY, AL ZIP 36106.  
TELEPHONE NUMBER 334-262-2499.

1/10/04

REMARKS: TO HELP SET  
OUT MY BURDEN OF  
PROOF.

8. NAME EDGAR & JOANN GREENWOOD.  
HOME ADDRESS 103 COURTLAND DRIVE,  
MONTGOMERY, AL ZIP 36105.  
TELEPHONE NUMBER 334-269-9158.

1/10/04

REMARKS: TO HELP SET OUT  
MY BURDEN OF PROOF.

9. NAME KATRINA GREENWOOD.  
HOME ADDRESS 2437 EAST 6<sup>th</sup> SIXTH STREET,  
MONTGOMERY, AL ZIP 36106.  
TELEPHONE NUMBER 334-262-2499.

1/10/04

REMARKS: TO HELP SET OUT  
MY BURDEN OF PROOF.

10. NAME PATRICIA WILSON.  
HOME ADDRESS 248 WEST SOUTH BLVD,  
MONTGOMERY, AL ZIP 36105.  
TELEPHONE NUMBER 334-613-3828.

1/10/04

REMARKS: TO HELP  
SET OUT MY BURDEN  
OF PROOF.

JANUARY 10, 2004  
DATE

RESPECTFULLY SUBMITTED,  
KOURTNEE GREENWOOD  
KOURTNEE GREENWOOD.

CC-2002-909.60

Case Number

☒ State of Alabama  
☐ Municipality of \_\_\_\_\_

STATE OF ALABAMA  
 In the CIRCUIT Court  
 of MONTGOMERY County  
 [The City/Town of MONTGOMERY]

KOURTNEE GREENWOOD  
 Defendant

TO: MELISSA RITTENOUR Circuit  
 Clerk of MONTGOMERY County Courthouse  
 (Address)  
251 S. LAWRENCE ST. Montgy, AL 36104

You are ordered to appear in the above-named court on the following list  
 date, time and place, and bring the following documents, books, or papers  
 other things to be produced on behalf of the PETITIONER DEFENDANT  
 Need this info. to SET OUT BURDEN OF PROOF DUE TO P

Date: PRIOR TO; PENDING.

RULE 32 Petition  
IN COURT.

Time: \_\_\_\_\_

Place: \_\_\_\_\_

CC-02-909  
 Things to be Produced: TRANSCRIPT OF MINUTES OF MY SENTENCING ON DEC 3  
2002. / COPIES OF MINUTES TO MY INDICTMENTS: CASE NO# CC-02-909 & DC-02-

This subpoena duces tecum is based upon application of the CRIMINAL 193  
PROCEEDING LISTED ABOVE. / RULE 17.3 ALA. R. CR. P. / Rule 45 Rule Civil P  
1/10/04

Date

KOURTNEE GREENWOOD  
 Clerk's Signature

# RETURN ON SERVICE.

I certify that I personally  
 delivered a copy of this order  
 to CIRCUIT CLERK, MONTGOMERY  
 on JANUARY 10, 2004

☒ Served by Mail

Date Mailed JANUARY 10, 2004

Signature and Title  
 of Process Server

Signature of Sheriff  
 and/or Deputy Sheriff

THINGS TO BE PRODUCED, CONTINUED CAUSE  
FRONT PAGE TO SMALL TO HOLD:

PLEASE PRODUCE:

1. TRANSCRIPT OF MINUTES TO AND OF MY SENTENCING IN MY CRIMINAL CASE NO# CC-2002-909 ON DECEMBER 30<sup>th</sup>, 2002.

2. COPIES OF THE MINUTES TO MY INDICTMENT IN MY CRIMINAL CASE NO# CC-2002-909 ON JULY 19, 2002, AND COPIES OF MINUTES TO MY INDICTMENT IN CASE NO# DC-2002-1932, UPON REASON WHY I WAS NOT INDICTED FOR THAT OFFENSE ON JULY 19, 2002.

3. COPIES OF THE POLICE REPORTS / INCIDENT REPORTS, AND ANY OTHER INFORMATION THAT WAS FILED IN MY CRIMINAL CASE NO# DC-2002-1932 BY SUPPOSEDLY VICTIM HAROLD FRANKLIN ON MARCH 30<sup>th</sup>, 2002 AND ON APRIL 18, 2002.

(A.) SUCH PRODUCTION OF DOCUMENTS IS TO TAKE PLACE AT THE PLACE WHERE SUCH DOCUMENTS ARE REGULARLY KEPT. BECAUSE THIS ACTION IS PENDING BEFORE THIS COURT, REQUESTER/PETITIONER FURTHER ASK THIS COURT TO ORDER THE PRODUCTION TO TAKE PLACE BEFORE THE COURT ANSWERS THE RULE 32 PETITION PENDING.

DATED 1/10/04

Kourtnee Greenwood  
KOURTNEE GREENWOOD

**IN THE CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT  
MONTGOMERY COUNTY, ALABAMA**

**KOURTNEY GREENWOOD,**  
Petitioner,

v.

**STATE OF ALABAMA,**  
Respondent.

)  
)  
)  
)  
)  
)  
)

**CC 02-909.60 TMH**

**ORDER**

The Court having reviewed the Petitioner's petition for Post-Conviction Relief, filed pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, and the Respondent's Answer and Motion for Summary Dismissal, makes the following findings:

The Petitioner alleges the following grounds as the basis for said petition:

1. The Court was without Jurisdiction to render the judgment or to impose the sentence.
2. The sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law.
3. Newly discovered material facts exist which requires that the conviction or sentence be vacated by the court.

The Petitioner fails to state a claim on which relief may be granted; and/or the petition fails to raise any material issue of fact or law which would entitle the Petitioner to relief and no purpose would be served by any further proceedings in this matter. Petitioner request for relief on all issues is **DENIED**.

Petitioner was indicted in July of 2002 for Robbery in the first degree. On December 11th, 2002, a jury in Montgomery County found Petitioner guilty of said offense. Petitioner was sentence December 30, 2003 to a life sentence after the Court noted that the state proved two prior felonies. Petitioner next filed an appeal in the Court of Criminal Appeals on or about February 6, 2003. The Court of Criminal Appeals affirmed the lower court.

**RECEIVED**

1-15-04

CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT

1. The Court finds that it had jurisdiction to render the judgment and to impose the sentence. With respect to Petitioner's claim of lack of jurisdiction due to his arrest without probable cause the law is clear. The Alabama Court of Criminal Appeals stated in Sumlin v. State, 710 So. 2d 941 (Ala.Crim.App. 1998) that "An illegal arrest claim does not raise the jurisdiction of the court and can be barred from Rule 32 review because it could have been but was not raised at trial or on appeal." Petitioner had a trial in December of 2002 and filed an appeal in February of 2003. Petitioner failed to raise this issue in his appeal and if raised at trial it was unsuccessful. Relying on Sumlin v. State, 1998 WL 32625 (Ala.Crim.App. 1998) Petitioners request for relief on this issue is due to be **DENIED.**

With respect to the Courts jurisdiction the Petitioner raises one other issue. Petitioner argues that the indictment fails to allege the elements of Robbery in the first degree. In support of this allegation the Petitioner states that in order to have a proper indictment for Robbery in the first degree the indictment must state that the victim suffered serious physical injury.

In Shoulders v. State, 703 So.2d 1015, 1018 (Ala. Crim. App. 1997) the Court explains that this is not a valid jurisdictional question by stating "A claim by the petitioner that he was charged with the wrong crime and that the court was, therefore, without jurisdiction to render a judgment or pronounce sentence was really a challenge to the sufficiency of the evidence and was barred."

Even if this claim was a valid jurisdictional question it is without merit. The law in Alabama does not require the defendant to cause serious physical injury to the victim in order to be guilty of Robbery in the first degree. Johnson v. State, 473 So. 2d 607 (Ala. Crim. App. 1985) state that a defendant commits Robbery in the first degree if "in the course of committing a theft he...uses force against the person of the owner or any person present with intent to overcome his physical resistance or physical power of resistance," and he "is armed with a deadly weapon or dangerous instrument" or "causes serious physical injury to another." It is not necessary for the defendant to cause serious physical injury to

be found guilty of Robbery in the first degree. Petitioners request for relief on this issue is due to be **DENIED**.

2. Next the Petitioner argues that the sentence imposed exceeds the maximum authorized by law, or is otherwise not authorized by law. Petitioner argues that he was only subject to one prior for the purposes of the Habitual Offender Act, and that the Court erred in allowing the state to present two (2) priors.

These claims amount to nothing more than bare allegations, unsupported by any facts or argument; thus, Petitioner has failed to meet his burden of pleading under Rule 32.3 of the Alabama Rules of Criminal Procedure, and the specificity requirements of Rule 32.6 of the Alabama Rules of Criminal Procedure.

Petitioner did have two (2) prior felony convictions for the purposes of the Habitual Felony Act when he committed the Robbery in question. In October of 1994 Petitioner plead guilty to Robbery in the first degree and was sentenced to 15 years in the penitentiary. In August of 1999 Petitioner plead guilty to the charge of Possession of Marijuana in the first degree and was sentenced under the Habitual Felony Act to 10 years split to serve 3 years reverse split postponed 1 year. Clearly the Petitioner had two prior felonies on his record when he committed the Robbery in question in April of 2002. Petitioners request for relief on these issues are due to be **DENIED**.

3. Petitioners final issue is that newly discovered material facts exist which requires that the conviction or sentence be vacated by the court. The Petitioner attached a copy of what he claims is a hand written affidavit from the Co-Defendant (Jamar Brown) in this case. Petitioner claims that these are new facts that exist that he was unaware of at the time of trial.

In order for the Petitioner to meet the definition of "newly discovered evidence" under subsection 32.1 (e), a petitioner must plead and establish five things:

1. That the facts relied on were not known by petitioner or his counsel at the time of trial, at the time of sentencing, in time to file a new trial motion, or in time to be included in a prior




collateral proceeding and they could not have been discovered by any of those times through the exercise of reasonable diligence;

2. The facts are not merely cumulative of facts known to the petitioner or his counsel;
3. The facts do not merely amount to impeachment evidence;
4. If the facts had been known at the time of trial or sentencing, the outcome of the proceeding would have been different; and
5. The facts establish that the petitioner is innocent of the crime for which he was convicted or should not have received the sentence that he received.

Petitioner fails to meet the burden placed upon him by Rule 32.1 (e) to sustain his argument. Obviously, if the Petitioner was in fact innocent of the robbery, then he knew he did not participate in the robbery with Brown. At the time of trial the Petitioner and his attorney were aware of the Co-Defendant Jamar Brown and could have called him as a witness. Mr. Brown's Affidavit establishes that his story if he would have testified at trial would have been the same then as it is today. Hence, there is no new evidence. Mr. Brown in his affidavit avers that he spoke with Petitioners attorney, Wiley Hartley, before Petitioners trial and told Mr. Hartley exactly what is now contained in Mr. Brown's affidavit. These facts were known at the time of Petitioners trial and as such are not newly discovered facts. Petitioners request for relief on this issue is due to be **DENIED.**

Wherefore, it is hereby ORDERED that the Petitioner's Rule 32 Petition is **DENIED.**

Done this the 13<sup>th</sup> day of January, 2004

  
TRUMAN M. HOBBS, JR.  
CIRCUIT JUDGE

cc: Ben Schoettker  
Kourtney Greenwood

A. GENERAL INFORMATION:

☒ CIRCUIT COURT ☐ DISTRICT COURT ☐ JUVENILE COURT OF MONTGOMERY COUNTY  
KOURTNEE GREENWOOD Appellant  
v. ☒ STATE OF ALABAMA ☐ MUNICIPALITY OF \_\_\_\_\_

Case Number CC 02-909.60 Date of Complaint or Indictment JULY 2002 Date of Judgment/Sentence/Order JAN. 13, 2004  
Number of Days of Trial/Hearing \_\_\_\_\_ Date of Notice of Appeal \_\_\_\_\_  
Days \_\_\_\_\_ Oral: \_\_\_\_\_ Written: JAN. 17, 2004  
Indigent Status Requested: ☒ Yes ☐ No Indigent Status Granted: ☒ Yes ☐ No

B. REPRESENTATION:

Is Attorney Appointed or Retained? ☐ Appointed ☐ Retained. If no attorney, will appellant represent self? ☒ Yes ☐ No  
Appellant's Attorney (Appellant if pro se) (Attach additional pages if necessary) KOURTNEE GREENWOOD #179810 Telephone Number N/A  
Address 100 WARRIOR LAKE / B City BESSEMER State AL Zip Code 35023-7299

C. CODEFENDANTS: List each CODEFENDANT and the codefendant's case number.

Codefendant	<u>JAMAR BROWN</u>	Case Number	<u>CC02-905</u>
Codefendant		Case Number	
Codefendant		Case Number	

2004 JAN 22 2:24 PM Filed in Circuit Clerk's Office

D. TYPE OF APPEAL: Please check the applicable block.

1 ☐ State Conviction 4 ☐ Pretrial Order 7 ☐ Juvenile Transfer Order 10 ☐ Other (Specify) \_\_\_\_\_  
2 ☒ Post-Conviction Remedy 5 ☐ Contempt Adjudication 8 ☐ Juvenile Delinquency \_\_\_\_\_  
3 ☐ Probation Revocation 6 ☐ Municipal Conviction 9 ☐ Habeas Corpus Petition \_\_\_\_\_

E. UNDERLYING CONVICTION/CHARGE: Regardless of the type of appeal checked in Section D, please check the box beside each offense category for which the appellant has been convicted or charged as it relates to this appeal. Also include the applicable section of the Code of Alabama for State convictions.

1 <input type="checkbox"/> Capital Offense - § _____	6 <input type="checkbox"/> Trafficking in Drugs - § _____	11 <input type="checkbox"/> Fraudulent Practices - § _____
2 <input type="checkbox"/> Homicide - § _____	7 <input type="checkbox"/> Theft - § _____	12 <input type="checkbox"/> Offense Against Family - § _____
3 <input type="checkbox"/> Assault - § _____	8 <input type="checkbox"/> Damage or Intrusion to Property - § _____	13 <input type="checkbox"/> Traffic - DUI - § _____
4 <input type="checkbox"/> Kidnapping/Unlawful Imprisonment - § _____	9 <input type="checkbox"/> Escape - § _____	14 <input type="checkbox"/> Traffic - Other - § _____
5 <input type="checkbox"/> Drug Possession - § _____	10 <input type="checkbox"/> Weapons/Firearms - § _____	15 <input checked="" type="checkbox"/> Miscellaneous (Specify): <u>ROBBERY 1<sup>st</sup> - § 13A-8-41</u>

F. DEATH PENALTY:

Does this appeal involve a case where the death penalty has been imposed? ☐ Yes ☒ No

G. TRANSCRIPT:

1. Will the record on appeal have a reporter's transcript? ☐ Yes ☒ No  
2. If the answer to question "1" is "Yes," state the date the Reporter's Transcript Order was filed. \_\_\_\_\_ (Date)  
3. If the answer to question "1" is "No":  
(a) Will a stipulation of facts be filed with the circuit clerk? ☐ Yes ☒ No  
(b) Will the parties stipulate that only questions of law are involved and will the trial court certify the questions? ☐ Yes ☒ No

NOTE: If the appeal is from the district or juvenile court and the answer to question "1" is "No," then a positive response is required for question 3(a) or 3(b).

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## H. POST-JUDGMENT MOTIONS

(whether by trial court order or by the provisions of Rules 20.3 and 24.4 (A.R.C.P.))

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Day	Year		Month	Day	Year
			N/A			

## I. NATURE OF THE CASE: Without argument, briefly summarize the facts of the case.

KOURTHEE GREENWOOD WAS CONVICTED OF ROBBERY I AND RECEIVED A LIFE SENTENCE. DIRECT APPEAL WAS TAKEN AND CONVICTION AFFIRMED BY THE COURT OF APPEALS. GREENWOOD THEN FILED A RULE 32, A.R.C.P., PETITION, WHICH WAS DENIED BY THE TRIAL COURT ON JANUARY 13, 2004. THIS APPEAL FOLLOWED.

## J. ISSUE(S) ON APPEAL: Briefly state the anticipated issues that will be presented on appeal. (Attach additional pages if necessary.)

- 1.) THE COURT WAS WITHOUT JURISDICTION TO RENDER JUDGEMENT OR TO IMPOSE THE SENTENCE.
- 2.) THE SENTENCE IMPOSED EXCEEDS THE MAXIMUM AUTHORIZED BY LAW, OR IS NOT AUTHORIZED BY LAW
- 3.) NEWLY DISCOVERED MATERIAL FACTS EXIST WHICH REQUIRES THE CONVICTION OR SENTENCE BE VACATED BY THE COURT
- 4.) DENIAL OF 6<sup>TH</sup> AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL
- 5.) TRIAL COURT ABUSED THEIR DISCRETION BY DENYING RULE 32 PETITION WITHOUT GRANTING RELIEF OR ORDERING EVIDENTIARY HEARING.

## K. SIGNATURE:

JANUARY 17, 2004

Date

X Kourtnee Greenwood

Signature of Attorney/Party Filing this Form

ACR371

ALABAMA JUDICIAL DATA CENT.

NOTICE OF APPEAL TO THE ALABAMA COURT OF CRIMINAL APPEALS  
BY THE TRIAL COURT CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

STATE OF ALABAMA VS GREENWOOD KOURTNEY SOVERN JUDGE: TRUMAN M HOBBS

143

APPEAL DATE: 01/17/2004

## INDIGENCY STATUS:

GRANTED INDIGENCY STATUS AT TRIAL COURT:	<input checked="" type="checkbox"/> X	YES	<input type="checkbox"/> NO
APP. TRIAL COUNSEL PERMITTED TO W/D ON APPEAL:	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> X NO
INDIGENT STATUS REVOKED ON APPEAL:	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/> X NO
INDIGENT STATUS GRANTED ON APPEAL:	<input checked="" type="checkbox"/> X	YES	<input type="checkbox"/> NO

DEATH PENALTY: NO

APPEAL TYPE: RULE 32 PETITION

THIS APPEAL IS FROM AN ORDER DENYING A PETITION (I.E., RULE 32 PETITION, WRIT OF HABEAS CORPUS, ETC) OR FROM ANY OTHER ISSUED BY THE TRIAL JUDGE.

CO/CASE NUMBER: 03/CC 2002 000909.60

ORDER ENTERED (DATE): 01132004 PETITION: ☐ DISMISSED ☒ DENIED ☐ GRANTED

POST-JUDGMENT MOTIONS FILED:	DT FILED	DT DENIED	CON BY AGREE
<input type="checkbox"/> MOTION FOR NEW TRIAL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> MOTION FOR JUDG. OF ACQUIT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> MOTION TO W/D GUILTY PLEA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> MOTION FOR ATTY TO W/DRAW	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> OTHER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

COURT REPORTER (S):  
ADDRESS:

N/A

APPELLATE COUNSEL #1:  
ADDRESS:

PRO SE

PHONE NUMBER:

000-000-0000

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APPELLATE COUNSEL #2:  
ADDRESS:

PHONE NUMBER:

APPELLANT (PRO SE):  
ADDRESS:

GREENWOOD KOURTNEY SOVERN  
W.E.D.C.F. #179810  
BESSEMER, AL 350230000  
179810

AIS #:

APPELLEE (IF CITY APPEAL):  
ADDRESS:

I CERTIFY THAT THE INFORMATION PROVIDED  
ABOVE IS ACCURATE TO THE BEST OF MY  
KNOWLEDGE AND I HAVE SERVED A COPY OF  
THIS NOTICE OF APPEAL ON ALL PARTIES TO  
THIS ACTION ON THIS 23<sup>rd</sup> DAY OF Jan, 04

OPERATOR: DBH  
PREPARED: 01/23/2004

Melissa Rutledge  
CIRCUIT COURT CLERK

State of Alabama  
Unified Judicial System

Form ARAP-14

Rev. 11/91

**CERTIFICATE OF COMPLETION AND  
TRANSMITTAL OF RECORD ON  
APPEAL BY TRIAL CLERK**Appellate Case Number  
\_\_\_\_\_TO: THE CLERK OF  
THE COURT OF CRIMINAL APPEALS OF ALABAMADATE OF  
NOTICE OF APPEAL:

01/17/04

APPELLANT

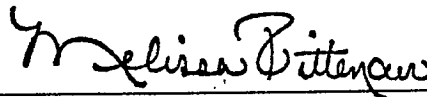
KOURTNEY S. GREENWOOD

v. STATE OF ALABAMA

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of \_\_\_\_\_ pages) (\_\_\_\_\_ volumes of 200 pages each and one volume of \_\_\_\_\_ pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of briefs.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

DATED this 1st day of MARCH, 2004.



Circuit Clerk